

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels
Ethics in Government Act of 1978

Division No. 87-1

Before: MacKinnon, Senior Circuit Judge, Presiding,
Morgan, Senior Circuit Judge and Pell,
Senior Circuit Judge

REPORT OF INDEPENDENT COUNSEL

In Re

EDWIN MEESE III

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Washington, D.C.
July 5, 1988

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FOREWORD

On February 2, 1987, I was appointed by the Independent Counsel Division of the United States Court of Appeals for the District of Columbia Circuit under the provisions of the Ethics in Government Act of 1978, as amended, as an independent counsel to investigate whether former Assistant to the President Franklyn C. Nofziger committed a violation of any federal criminal law. The appointment was made in response to a January 6, 1987 application filed by Acting Attorney General Arnold I. Burns.

One question to be investigated was whether Mr. Nofziger, within one year of being employed as Assistant to the President, communicated in violation of 18 U.S.C. Section 207(c), a conflict of interest provision, as an agent on behalf of Welbilt Electronic Die Corporation,^{1/} with James E. Jenkins, Deputy Counselor to the President, with intent to influence him with respect to a contract to manufacture small engines for the United States Army.

On March 6, 1987, as a result of litigation concerning the constitutionality of the statute authorizing the appointment of independent counsels, I accepted a parallel appointment from the Department of Justice to investigate all

^{1/} Welbilt later changed its name to Wedtech Corporation.

of the matters encompassed by the February 2, 1987 Order of the Court.^{2/}

During the course of the Nofziger investigation, my staff and I conferred frequently with the United States Attorney for the Southern District of New York and his assistants concerning a grand jury investigation in that district into matters concerning Wedtech. The two offices cooperated and exchanged information useful to both investigations.

In early April 1987, the New York prosecutors were in their third month of lengthy interviews with four former officers of Wedtech who, in January 1987, had entered pleas of guilty to charges of criminal wrongdoing with respect to actions they took while officers of Wedtech. During those interviews, the New York prosecutors learned of allegations concerning actions of a California attorney, E. Robert Wallach, involving Wedtech that possibly implicated Attorney General Edwin Meese III when he was Counselor to the President between 1981 and 1985.

The United States Attorney for the Southern District of New York notified the Department of Justice of these

^{2/} On June 29, 1988, the Supreme Court of the United States issued an opinion which upheld the constitutionality of the independent counsel statute. Morrison v. Olson, No. 87-1279, slip op. (U.S. June 29, 1988).

developments. The Public Integrity Section immediately began a review to determine whether the evidence justified the appointment of an independent counsel.

On May 11, 1987, Acting Attorney General Arnold I. Burns, after reviewing the information developed by the United States Attorney for the Southern District of New York and the recommendations of the Public Integrity Section, requested that I "accept referral of the question whether the federal conflict of interest law, 18 U.S. Code §§ 201-211, or any other provision of federal criminal law, was violated by Mr. Meese's relationship or dealings at any time from 1981 to the present with any of the following: Welbilt Electronic Die Corporation/Wedtech Corporation (including any of its contracts with the U.S. Government, or efforts to obtain same); Franklyn C. Nofziger; E. Robert Wallach; W. Franklyn Chinn; and/or Financial Management International, Inc."

This action was taken pursuant to 28 U.S.C. §§ 592(e) and 594(e), which permit the Department of Justice to make a direct referral to an independent counsel of matters "related to" matters the independent counsel has under investigation.

On May 11, 1987, I formally notified the Court of my acceptance of the referral.

On August 18, 1987, in response to a request for a clarification of the scope of my mandate, the Court issued an Order stating, inter alia, that:

the Independent Counsel shall have jurisdiction and authority to investigate other allegations and evidence of violation of any federal criminal law by Edwin Meese III developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation, and to seek indictments and to prosecute any persons or entities involved in any of the foregoing events or transactions that Independent Counsel believes constitute a federal offense and that there is reasonable cause to believe that the admissible evidence probably will be sufficient to obtain and sustain a conviction (28 U.S.C. § 594(f)) of any federal criminal law (other than a violation constituting a Class B or C misdemeanor, or an infraction, or a petty offense) arising out of such events, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense related to the prosecutorial jurisdiction of the Independent Counsel as herein established

I will continue to serve as independent counsel until the Nofziger case is finally decided. However, I will seek to terminate my appointment to investigate Mr. Meese's conduct when "the investigation of all matters with [my] prosecutorial jurisdiction . . . [has] been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions" 28 U.S.C. § 597(b)(1).

The Nofziger and Meese investigations were team efforts in every respect. The staff consisted of lawyers, an administrator, special agents of the Federal Bureau of Investigation, special agents of the Internal Revenue Service, secretaries, legal assistants, and other essential personnel.

All worked long and hard under stressful conditions. I extend to them my gratitude and thanks.

Special thanks and appreciation go to Lovida H. Coleman, Jr., Deputy Independent Counsel, who was largely responsible for getting the office organized, the systems in place and the investigation off the ground. Ms. Coleman also played a major role in the Nofziger investigation and trial, and rendered valuable assistance in connection with the Meese investigation.

Newman T. Halvorson, Jr. and Merrick B. Garland, together with Ms. Coleman and myself, comprised the team that tried the Nofziger case on behalf of the government. Mr. Halvorson and Mr. Garland deserve an enormous amount of thanks and credit for their excellent performances in connection with the investigation and the trial. Mr. Halvorson also greatly assisted in connection with the Meese investigation.

Jocelyn F. Samuels, Richard A. Friedman, Carol A. Fortine, and Charles A. Blanchard worked full-time on the Nofziger investigation and also were extremely helpful during the trial of the case. Messrs. Friedman and Blanchard also made major contributions to the Meese investigation.

Robert N. Weiner had a major role in the Nofziger investigation, and played the leading role in the successful opposition of the government to more than 20 pretrial motions filed in the Nofziger case.

Stephen J. Pollak and Wendy S. White served as my counselors, successfully defending my office from attacks on the constitutionality of the independent counsel statute and attacks on my jurisdiction, and rendered invaluable assistance in other substantive respects.

Paul J. Maloney and Brian D. Coad were extremely helpful during the investigation phase of the Nofziger matter, as were John T. Rich, Daniel J. Bussel, and John R. Cooke.

And last, but by no means least, I wish to thank and express my deep appreciation to John P. Hume and Charles F.C. Ruff for their counsel and advice on many phases of the Nofziger and Meese investigations.

Most of these lawyers worked on a part-time basis while fulfilling obligations at their law firms. I am deeply grateful that lawyers of such outstanding talents were willing to give their time and energies to this important public service.

Invaluable assistance also was provided by the Federal Bureau of Investigation in connection with the Nofziger investigation. Special agents who worked diligently and with great effect are: Dawn E. Eastes, Scott W. Henderson, William M. Mackey and Alfred Miller. Brian Garrett, FBI Accounting Specialist, also was of great assistance to the office.

Throughout the entire period of both the Nofziger investigation and the Meese investigation, I was

extremely fortunate to have the invaluable services of the Office Administrator, Michael E. Jones.

The May 11, 1987 referral of the Meese matter necessitated finding a highly qualified lawyer to take full responsibility for the conduct of the new investigation. Carol E. Bruce, a former Assistant United States Attorney for the District of Columbia with a vast amount of criminal trial experience, fortunately agreed to fulfill that role. Ms. Bruce, Deputy Independent Counsel, started working on the Meese investigation on the day of the May 11, 1987 referral. Her performance has been outstanding; it is difficult, if not impossible, for me adequately to express my thanks and appreciation to and my great respect for Ms. Bruce.

Ms. Bruce and my office were soon joined by Bernard John Barrett, Jr. with broad experience in securities and fraud matters with the Securities and Exchange Commission. Mr. Barrett has worked long hours on a full-time basis. His performance has been uniformly of the highest quality, and is greatly appreciated.

In September of 1987, I was fortunate to obtain the services of Susan K. Bender, who has put in long and productive hours on the Meese investigation. Her work has been outstanding in every respect.

My office also received part-time assistance from Professor Gerard E. Lynch of the Columbia University School of Law, and from Richard A. Simpson and Eric L. Richard, whose

combined expertise in criminal investigative work and national security matters were particularly helpful in connection with certain aspects of the Meese investigation. And my deep thanks and appreciation go to Edward C. McAdams, who rendered valuable assistance in the editing of this Report.

As previously stated, a number of lawyers who worked on the Nofziger investigation and trial also provided substantial assistance in connection with the Meese investigation. Also, the four Special Agents previously mentioned continued to work with the office of independent counsel following the Nofziger trial. In addition, FBI Special Agents John A. Hosinski, Thomas F. Montgomery, Keith Kelly, and Una D. Stanton, together with IRS Special Agents Eugene Cardillo, Kenneth Williams, Lawrence R. Egan, and IRS Revenue Agents Robert L. Charboneau and Charles Tragna rendered valuable services in connection with the Meese investigation.

Charles Alliman of the Department of Justice Office of Security deserves special thanks for his extraordinary efforts in assisting this office.

My gratitude and deep appreciation are also extended to the legal assistants, the secretaries, the law clerks and other personnel, without whom the office of independent counsel could not have fulfilled its mandate. Some of them served throughout the entire Nofziger and Meese investigations. All of them, during the time they were with the office

of independent counsel, provided assistance critical to the completion of the investigations:

Angela M. Bertrand
Jennifer N. Bird
Barbara J. Campbell
Cecilia Carson
Cheryl Edwards
William L. Hurlock
James Neilson Kennedy, III
Marjorie A. Carroll Kicak
Robin C. Mackall
Lisa C. Moran
Eveline Ruehlin-Nelson
Marjorie L. Pollack
Catherine L. Shorter
Deborah A. Swanstrom
King V. Watts, Jr.
Howard A. Wise

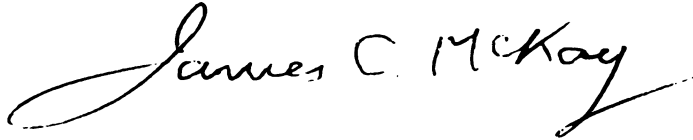
I am particularly grateful to two secretaries, Ms. Bird and Ms. Kicak, who have been with the office since its inception and who have been true, dedicated professionals in every respect.

Finally, I wish to express my thanks and appreciation to the officials and other staff members of the Department of the Army, the Small Business Administration, the Department of State, the National Security Council, the Department of Commerce, the Overseas Private Investment Corporation, the Central Intelligence Agency and the White House, who gave substantial assistance and full cooperation in connection with the Nofziger and the Meese investigations.

An independent counsel is required to make investigative and prosecutive decisions independent of any political, institutional or public pressure. An independent

counsel must also "comply with the written or other established policies of the Department of Justice respecting the enforcement of the criminal laws." 28 U.S.C. Section 594(f). For assisting me to fulfill that important responsibility, I wish to extend special thanks to the experienced career lawyers at the Department of Justice. They provided my office with invaluable and dispassionate advice and guidance concerning departmental policies and practices, written and unwritten, with respect to the difficult decisions I was called upon to make in the Nofziger and the Meese investigations.

Respectfully submitted,

A handwritten signature in cursive script, reading "James C. McKay". The signature is written in dark ink and is positioned below the typed name.

July 4, 1988

**Report of Independent Counsel
In Re
Edwin Meese III**

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INTRODUCTION

Following receipt of the May 11, 1987 referral relating to Mr. Meese, the office of independent counsel formulated an investigative plan, convened a grand jury, issued subpoenas, collected documentary evidence, and conducted interviews. A substantial portion of the evidence developed in the Nofziger inquiry relating to Welbilt/Wedtech was relevant and useful to the Meese investigation.

The first question investigated was whether Mr. Meese received a gratuity in violation of 18 U.S.C. § 201 in return for any official act he performed which benefited Welbilt/Wedtech. The investigative plan was: (1) to identify specific allegations, if any, concerning any official acts performed by Mr. Meese which could be construed as violative of section 201; (2) to determine whether Mr. Meese did, in fact, perform any official acts in connection with Welbilt/Wedtech's business activities; and (3) to conduct a full investigation of Mr. Meese's financial affairs from 1981 through 1986 to determine whether there was any evidence that Welbilt/Wedtech funds were paid to Mr. Meese directly or indirectly through individuals associated with the company. These individuals principally included E. Robert Wallach, a close friend of Attorney General Meese and a consultant to Welbilt/Wedtech since 1981, and W. Franklyn Chinn, Mr. Wallach's associate and money manager who, at Mr. Wallach's urging, became a financial consultant to Wedtech in April 1985 and a director of Wedtech in August 1985.

In developing its investigative plan, the office of independent counsel analyzed Mr. Chinn's management of a "blind" partnership, known as Meese Partners, which, at Mr. Wallach's suggestion, Mr. Meese established in May 1985. Specifically investigated were: (1) the circumstances surrounding the establishment of the partnership; (2) Mr. Chinn's management of trading accounts opened on behalf of the Meese Partners trust; and (3) Mr. Chinn's management of the accounts of his other customers.

The purpose of examining all of Mr. Chinn's investment activities was to determine whether Mr. Meese received illegal preferential treatment from Mr. Chinn or Mr. Wallach as a gratuity for any official act Mr. Meese performed in connection with Welbilt/Wedtech matters.

During the investigation of Mr. Chinn's money management operations, it was learned that he maintained a "Meese" account in Hong Kong purportedly for the purpose of trading in the Hong Kong Loco London Gold market. That information, coupled with questions that were raised from the discovery that large sums of cash had been transferred offshore by Mr. Chinn through agents and "foreign associates," led to an expansion of the investigation to include examination of underwriter records, bank transfer statements, and other financial records relating to Mr. Chinn's operations. The independent counsel also examined records obtained from a search of Mr. Chinn's offices in San Francisco conducted pursuant to a search warrant on November 28, 1987,

by agents associated with the office of independent counsel. Finally, the independent counsel examined records obtained by Hong Kong law enforcement authorities through a search of the offices and safe deposit boxes of Mr. Chinn's Hong Kong associates in coordination with the independent counsel on November 27, 1987.

An extensive review of Mr. Wallach's financial records also was conducted in an effort to determine whether there was any evidence of funds being transferred from Wedtech through Mr. Wallach to Mr. Meese or for Mr. Meese's benefit.

The investigation into Wedtech-related and Meese Partners matters was substantially complete by the end of November 1987. Beginning in early October 1987, the office commenced transferring to the United States Attorney for the Southern District of New York voluminous investigative materials that had been assembled, to assist the Southern District in determining how to proceed in its ongoing Wedtech-related grand jury investigation concerning Messrs. Wallach and Chinn and Dr. Rusty Kent London.^{1/}

On December 22, 1987, indictments were returned against Messrs. Wallach and Chinn and Dr. London in the Southern District of New York.

^{1/} Dr. London was an associate of Mr. Chinn's, and, upon Mr. Wallach's recommendation, had become a financial consultant to Wedtech.

Mr. Wallach provided certain information to the office of independent counsel in the Nofziger investigation. He also produced documents in connection with the Meese inquiry. However, upon learning that he was a "target" of the investigation in the Southern District of New York, Mr. Wallach, along with Mr. Chinn and Dr. London, asserted his privilege under the fifth amendment of the Constitution not to be compelled to be a witness against himself.

After agreeing to a partial waiver of his fifth amendment privilege, Mr. Wallach submitted to an unsworn deposition in the office of independent counsel on September 23, 1987. He appeared with counsel, and, on his counsel's advice, answered a limited number of questions about his relationship and dealings with Mr. Meese in connection with Wedtech and certain other matters. However, Mr. Wallach refused to answer any questions concerning his relationship with Wedtech or about his personal financial transactions.^{2/}

^{2/} In mid-October 1987, when it appeared that Messrs. Wallach, Chinn and London would be indicted in the Southern District of New York, and after the office had advised Mr. Wallach's counsel of a policy decision that the office would not pursue indictments of Messrs. Wallach, Chinn, and London in connection with Wedtech-related matters, Mr. Wallach's counsel made an offer to the office of independent counsel. If the independent counsel would preclude any other federal prosecuting authority from proceeding against Mr. Wallach for possible criminal violations, Mr. Wallach would appear without immunity before the grand jury in the Meese investigation, and subject himself to prosecution by the office of independent counsel for any law violations.

The office of independent counsel's investigation of matters relating to Welbilt/Wedtech, Meese Partners, and the financial analysis of Mr. Meese's records is discussed in detail in this Report.

As the Wedtech and Meese Partners aspect of the investigation reached a point where it could proceed no further without the critical testimony noted above, the investigation was focusing on a new matter that had come to the office's attention near the end of July 1987. A review of Department of Justice records, as well as bank account records of Mr. Wallach, disclosed that in 1985 Mr. Wallach was involved on behalf of a Swiss financier, Bruce Rappaport, in a proposal to build an oil pipeline from Kirkuk, Iraq, to the port of Aqaba, Jordan. The documents also disclosed that Mr. Meese had assisted Mr. Wallach in connection with the proposed pipeline project.

(Footnote Continued)

Mr. Wallach's offer was declined for the following reasons: (1) The independent counsel had already heard, during his deposition, Mr. Wallach's self-serving, broad denials of any wrongdoing arising from his relationship and dealings with Mr. Meese; (2) the independent counsel knew that the United States Attorney for the Southern District of New York would strongly oppose such an arrangement which would effectively have caused a severance of potential defendants in the anticipated indictment; and (3) the office of independent counsel had developed and transferred to New York evidence of possible criminal wrongdoing by Mr. Wallach in matters which were not of direct concern to the independent counsel's mandate to investigate Mr. Meese's conduct.

The office of independent counsel also learned that Mr. Wallach received a retainer of \$150,000 from Mr. Rappaport which, at Mr. Wallach's direction, was wired to Mr. Chinn. It was further learned that Mr. Wallach failed to report this income or pay any tax on it until after he was asked to produce his tax and other financial records.

A review of documents produced by the Department of Justice in late August 1987, after they had been given an interim classification "Top Secret," revealed, among other things, two September 1985 memoranda from Mr. Wallach to Mr. Meese. The contents of these memoranda raised the possibility of a violation of the Foreign Corrupt Practices Act.

In early September 1987, upon receipt and review of the classified Department of Justice documents, the office of independent counsel immediately requested a line-by-line classification review of the materials. The Department of Justice Office of Security, based on this review, declassified most of the documents and lowered the classification level of the remaining sensitive information in the documents to "Confidential."^{3/}

^{3/} Later, as the investigation developed and it became clear that the office of independent counsel was focusing on possible violations of the Foreign Corrupt Practices Act, the Office of Security raised the classification level on the most incriminating Wallach memorandum to "Secret." The office of independent counsel sought a second review of the Department
(Footnote Continued)

Before commencing an all-out investigation of the Aqaba pipeline matter, the office of independent counsel discreetly contacted certain government agencies, including the Department of State, the National Security Council, and the Central Intelligence Agency, to ascertain whether there were any intelligence operations or other sensitive aspects of the Aqaba pipeline project. The office also sought from those and other agencies the production of all documents concerning the United States' involvement with the Aqaba pipeline project. In addition, the office conducted preliminary interviews of present and former government officials, as well as private citizens, and engaged in efforts to contact and interview Mr. Rappaport.

On November 22, 1987, the office of independent counsel took Mr. Meese's sworn deposition on the Aqaba

(Footnote Continued)

of Justice documents by the Department of State, and also sought and obtained permission to be the classifying authority for all of the Department of Justice documents which the office had obtained.

The office of independent counsel maintained the classification markings of the Office of Security, and observed required handling procedures, pending a Department of State review of the documents. While the office was waiting for a Department of State response concerning classification of Department of Justice documents and certain Department of State materials, the Counsel to the President established an interagency panel to review for declassification all classified information which had been obtained from government agencies during the course of the Aqaba pipeline inquiry. Ultimately, all the classified information which the office of independent counsel deemed critical to the Meese investigation was declassified by the interagency panel.

pipeline matter. During the deposition he was questioned about the then-classified information in Mr. Wallach's September 1985 memoranda to him which reflected a possible violation of the Foreign Corrupt Practices Act.

After taking Mr. Meese's deposition, and after further consultation with officials at the Department of State and the Department of Justice, the office of independent counsel commenced a full investigation of the Aqaba pipeline matter to determine if there was any evidence, other than the Wallach memoranda referred to above, of a violation of the Foreign Corrupt Practices Act.

As will be developed in this Report, the office of independent counsel has been unable to obtain the sworn testimony of certain critical witnesses relating to the Aqaba pipeline matter, including that of Mr. Wallach, Mr. Rappaport, and certain foreign government officials.^{4/} In mid-March 1988, after Mr. Rappaport unilaterally withdrew from a cooperation agreement with this office, it became apparent that the office of independent counsel would not be able to obtain his and other critical sworn testimony in the foreseeable future. However, it was determined that the

4/ During Mr. Wallach's September 23, 1987 unsworn deposition he was asked certain questions about the Aqaba pipeline matter. Upon advice of counsel he refused to give any substantive answers, and would only make the general statement through counsel that "he was acting . . . in a matter in which he believed the United States had a security interest."

office would continue to investigate the Aqaba pipeline matter, and include in this Report findings and conclusions based on the currently available evidence.

During July 1987, while the office was investigating the circumstances surrounding the establishment and operation of Meese Partners, it was learned that Mr. Meese possibly had failed to divest himself of securities in regional Bell operating companies (RBOCs) in 1985 after becoming Attorney General. In his Senate confirmation hearings, Mr. Meese had committed to sell those securities.

In consultation with the Office of Government Ethics (OGE), it was concluded that OGE should conduct its traditional "conflicts analysis" to determine if Mr. Meese had taken any actions while Attorney General involving matters concerning those companies.

In December 1987, OGE and the Department of Justice provided the office of independent counsel with preliminary information which revealed that Attorney General Meese had participated in Department of Justice decisions relating to the RBOCs while retaining at least legal title to RBOC stock. In January 1988, the office of independent counsel began a full investigation of the question of possible violations of the conflicts of interest laws. The results of that aspect of the investigation are set forth in Part Three of this Report.

In mid-February 1988, during the course of investigating the Aqaba pipeline matter, information was discovered concerning efforts by Mr. Wallach in 1985 to assist

the wife of Attorney General Meese, Ursula Meese, in obtaining salaried employment through the help of a Washington, D.C. building developer and owner, Howard M. Bender. It also was learned that, during the time Mr. Wallach was urging Mr. Bender to direct the Bender Foundation to make a substantial contribution earmarked for the salary of a position for Mrs. Meese with a local charitable organization, Mr. Bender was having a serious lease-renewal problem with the Department of Justice. Mr. Wallach introduced Mr. Bender to James E. Jenkins, a former Deputy of Mr. Meese's, to assist Mr. Bender with that problem.

The office of independent counsel investigated the question whether the federal bribery and gratuity provisions were violated by the conduct of any of the individuals involved in this particular matter. The investigation was hampered because Mr. Wallach was unavailable as a witness due to his assertion of his fifth amendment right. Moreover, serious conflicts in the information given by key witnesses to the office of independent counsel precluded a final resolution of these issues. Part Five of this Report presents information on the current status of this matter.

In December 1987, as the IRS agents assigned to the office were completing their financial records analysis and review of Mr. Meese's tax returns, they discovered that Mr. Meese had not reported any capital gains on the sale of securities by Mr. Chinn at the time the Meese Partners trading accounts were opened in 1985, nor had he informed the Internal

Revenue Service of the sales transactions. An investigation was conducted to determine the circumstances surrounding these apparent income tax violations. That aspect of the independent counsel's investigation is completed, and findings and conclusions are included in Part Four of this Report.

Other matters were brought to the attention of the independent counsel during the course of the investigation. One such matter involved allegations by the President of INSLAW, Inc., of improper conduct on the part of certain high-level Department of Justice officials, including Mr. Meese. INSLAW is a corporation engaged in the computer software business. These allegations arose out of a dispute between INSLAW and the Department of Justice dating back to a period prior to the time that Mr. Meese became Attorney General.

After receiving and reviewing the INSLAW allegations, the independent counsel concluded that they did not fall within his mandate. Accordingly, the independent counsel declined to accept jurisdiction of that matter and referred it to the Department of Justice Public Integrity Section.

May 3, 1988, was the last date that the office of independent counsel presented testimony to the grand jury. The last deposition was taken on May 26, 1988. Witness interviews were conducted through June 24, 1988.

Insofar as the investigation of Mr. Meese is concerned, this Report sets forth "fully and completely a

description of the work of the independent counsel, including the . . . reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel which was not prosecuted." 28 U.S.C. § 595(b)(2).

Following this Introduction, the Report of the office of independent counsel is organized as follows:

First, a summary of the essential facts developed with respect to each of the matters investigated, including a reference to matters that the independent counsel intends to refer to other law enforcement authorities for possible further investigation and prosecution.

Second, a legal analysis concerning whether any of the matters investigated, taken alone or together, constitute a probable criminal law violation and, if so, the reasons why the independent counsel has declined to prosecute.

Third, a detailed statement of facts in seven parts with respect to each of the matters that were investigated.

SUMMARY OF FACTS AND CONCLUSIONS

I. MR. MEESE'S ASSISTANCE TO THE WELBILT/WEDTECH CORPORATION

In April 1981, three months after becoming Counselor to the newly elected President, Edwin Meese III was approached by his close friend, E. Robert Wallach. Mr. Meese and Mr. Wallach had been friends for 24 years since they were law school classmates at the University of California at Berkeley. Mr. Wallach, a successful California personal injury lawyer, asked Mr. Meese to use his influence to help a private corporation, Welbilt Electronic Die Corporation (Welbilt/Wedtech), obtain a government contract. Mr. Meese obliged his friend and, through his deputies at the White House, assisted Welbilt in procuring the contract.

Over the next 17 months, Mr. Wallach repeatedly sought and obtained Mr. Meese's intervention to support Welbilt's efforts to be awarded the government contract. Welbilt, a minority-owned company in New York's South Bronx, was seeking in 1981 to obtain a non-competitive contract from the Department of the Army to manufacture military standard engines under a Small Business Administration (SBA) pilot program designed to help minority-owned enterprises.

In April 1981, Welbilt reached an impasse in price negotiations with the Army. The Army wanted to withdraw the contract from the SBA pilot program and proceed with a competitive procurement. The SBA supported Welbilt, and opposed the Army's effort to withdraw the contract.

Welbilt's founder and President, John Mariotta, learned that Mr. Wallach was Mr. Meese's close friend. Mr. Mariotta solicited Mr. Wallach's assistance -- not in negotiating as a lawyer for the company with the Army -- but in using his friendship with Mr. Meese to help Welbilt obtain the contract.

Franklyn C. Nofziger, another friend of Mr. Meese's and the former Assistant to the President for Political Affairs, also successfully solicited Mr. Meese's assistance in the Welbilt contract dispute. Mr. Meese did nothing to discourage or dissuade Mr. Nofziger from lobbying him on behalf of Welbilt. This contact by Mr. Nofziger occurred while he was barred by the Ethics in Government Act from lobbying his former agency, the White House. Mr. Nofziger was prosecuted by the independent counsel for that contact and other illegal contacts with the White House, and was found guilty by a jury on February 11, 1988, of three counts of violating 18 U.S.C. § 207(c).

Mr. Meese did not directly intervene in response to these solicitations, but delegated the task to his deputies, first Edwin Thomas and later James E. Jenkins. These officials, cognizant of the close friendship between Messrs. Wallach and Meese, acted with Mr. Meese's knowledge and approval. The combined efforts of Mr. Meese and his staff were instrumental in persuading the Army to reverse its decision to withdraw the contract from the pilot program.

The Army awarded the engine contract to Welbilt on September 28, 1982.

In July 1983, Mr. Meese at Mr. Wallach's request also interceded in connection with Welbilt's efforts to secure the Economic Development Administration's approval of private financing arrangements which Welbilt needed to avoid bankruptcy.

The independent counsel investigated Welbilt/Wedtech contacts with Mr. Meese to determine whether Mr. Meese violated the gratuities provisions of 18 U.S.C. § 201. Part of the independent counsel's investigation focused on Mr. Wallach's relationship with and compensation by Welbilt/Wedtech. The gratuities provision makes it a crime for a public official to receive anything of value for or because of any official act performed or to be performed by him. In summary, the investigation revealed the following:

Mr. Meese and his staff, with Mr. Meese's approval, took steps to assist Welbilt in obtaining the engine contract after Mr. Wallach began his requests for assistance in May 1981. A member of Mr. Meese's staff contacted the SBA about the contract on at least two occasions during the summer of 1981. Mr. Meese facilitated and was responsive to Mr. Nofziger's illegal lobbying for the contract in April 1982. Mr. Meese's deputy, Mr. Jenkins, made several contacts with the SBA about the contract from April through June 1982. Mr. Jenkins arranged and conducted a May 19, 1982 White House

meeting for Welbilt with Army and SBA officials. At the meeting he insisted that steps be taken by the Army and SBA representatives to ensure that Welbilt be awarded the engine contract.

In 1981, when Mr. Wallach was first contacted by Welbilt, he refused to accept any compensation for his efforts. He received only reimbursement of his out-of-pocket expenses. His stated motivation was that the White House could use the company's success as an example of the Administration's commitment to revitalize economically blighted areas.

In December 1982, three months after Welbilt was awarded the engine contract, Mr. Wallach proposed a consulting agreement whereby Welbilt would pay him \$200,000, in part retroactively, for services rendered from October 1, 1982, through December 31, 1983. Mr. Wallach specified that the fees would compensate him for his services as a legal and policy adviser.

Welbilt officers informed Mr. Wallach that the company was unable to finalize the consulting agreement due to its financial straits. However, in an agreement dated January 1, 1983, Welbilt promised Mr. Wallach that he would receive one percent of the company's common stock as compensation. The company officers predicted Mr. Wallach's shares would have a value of as much as \$1,000,000, if Welbilt could remedy its financial problems sufficiently to complete a public stock

offering. Mr. Wallach was fully aware that Welbilt would have to solve these problems before he could realize the potential value of his stock.

Mr. Wallach used his contacts with Mr. Meese to try to assist Welbilt in solving its financial problems and to enable the company to make a public offering in August 1983 under its new name, Wedtech Corporation. Specifically, at Mr. Wallach's request, Mr. Meese telephoned Secretary of Commerce Malcolm Baldrige about an important Welbilt application pending before the Department of Commerce. For such efforts, and for his prior assistance to the company in 1981 and 1982, Mr. Wallach received from Wedtech more than \$125,000 in fees in September 1983, common stock (subject to restrictions) with a market value of \$720,000 in August 1983, and options to buy 50,000 shares of Wedtech common stock.

Five months after the public offering, and several days after Mr. Meese's nomination on January 23, 1984, to be Attorney General, Mr. Wallach advised the Wedtech officers of his willingness to continue to assist Welbilt through his friendship with Mr. Meese. However, Mr. Wallach told the Wedtech officers that he would require advance payment for his services because he anticipated obtaining a position at the Department of Justice. Mr. Wallach added that he intended to continue to help the company, but he could not receive compensation from Wedtech while he was employed by the

Department. On February 3, 1984, Wedtech paid Mr. Wallach a fee of \$150,000 for services to be performed in 1984.

Mr. Wallach assisted Mr. Meese in connection with his confirmation hearings. However, the hearings were recessed in March 1984, when allegations were made of irregularities and possible improprieties in Mr. Meese's financial relationships with various individuals. An independent counsel was appointed under the Ethics in Government Act to investigate those allegations.

Mr. Wallach represented Mr. Meese in connection with that independent counsel's investigation until its completion in September 1984. During this six-month period, Mr. Wallach received no compensation from Mr. Meese. His retainer agreement with Mr. Meese, consistent with the Ethics in Government Act, provided for compensation by the court if no indictment was returned against Mr. Meese at the completion of the independent counsel's inquiry. There was no indictment, and Mr. Wallach sought compensation from the court in a process that proved to be protracted.

In September 1984, when the independent counsel's investigation was nearly completed, Mr. Wallach informed the Wedtech officers that he had been representing Mr. Meese without compensation and therefore needed another advance fee payment. He requested \$500,000 for future services to the company. Mr. Wallach emphasized that his representation of Mr. Meese gave him greater access to Mr. Meese and to the

Administration as a whole. Mr. Wallach reiterated his expectation that he would soon be assuming a top post at the Department of Justice upon Mr. Meese's confirmation as Attorney General; from this post, he predicted he could continue to assist Wedtech.

The Wedtech officers persuaded Mr. Wallach to accept a reduced amount, \$300,000, as an advance payment for 1985 and 1986. On October 26, 1984, Wedtech paid Mr. Wallach the agreed sum. The Wedtech officers told the office of independent counsel that they regarded the additional advance payment, in part, to cover Mr. Wallach's loss of income from his representation of Mr. Meese. In 1984, Mr. Wallach received a total of \$450,000 in advance payments for services Wedtech expected him to perform over a three-year period for the company primarily through his friendship with Mr. Meese.

Mr. Wallach allegedly received an additional \$100,000 from Wedtech through payments at the end of 1985 and the beginning of 1986. He was awarded additional stock options in 1985.

Mr. Meese became Attorney General on February 23, 1985. Although Mr. Meese wanted Mr. Wallach to join him at the Department of Justice, Mr. Wallach was not so employed because Mr. Meese was advised against hiring a lawyer to whom he owed a debt. (The legal fees incurred during the independent counsel investigation had not yet been resolved.) In addition, Mr. Meese understood from Mr. Wallach that a

Department of Justice position would not provide him with an adequate income.

Mr. Meese told the office of independent counsel that he did not know what income Mr. Wallach was receiving from Wedtech, and knew nothing about any of the statements Mr. Wallach allegedly made to Wedtech officials to the effect that he (1) required additional payments from Wedtech because he was representing Mr. Meese without compensation, and (2) required advance fee payments because he anticipated obtaining a Department of Justice job.

There is no evidence, apart from Mr. Wallach's unsubstantiated claims to Wedtech officers, that Mr. Wallach used his access to Mr. Meese to assist Wedtech after July 1983. Nor was any evidence discovered that Mr. Meese, at any time, knowingly received any money or thing of value from anyone in return for or on account of any official act he performed which benefited the company.

The independent counsel's investigation of the Wedtech matter is incomplete because four key witnesses have asserted their constitutional privilege against self-incrimination: Mr. Wallach, John Mariotta, W. Franklyn Chinn, who was a Wedtech director and money manager for Messrs. Meese and Wallach, and Dr. Rusty Kent London, who was an associate of Mr. Chinn and financial consultant to Wedtech. However, the independent counsel has determined that the currently

available evidence does not show any criminal wrongdoing by Mr. Meese in relation to Welbilt/Wedtech.

II. BENEFITS TO MR. MEESE FROM MR. CHINN'S MANAGEMENT OF MEESE PARTNERS FROM 1985 THROUGH 1987

In April 1985, Mr. Wallach referred Mr. Meese to Mr. Chinn, a San Francisco money manager.^{5/} At Mr. Wallach's urging, Mr. Chinn became Mr. Meese's money manager in May 1985. In encouraging Mr. Meese to use Mr. Chinn's services, Mr. Wallach told Mr. Meese that Mr. Chinn had obtained a return on Mr. Wallach's investments in excess of 20 percent. Mr. and Mrs. Meese understood that Mr. Chinn was taking them on as customers as a favor to Mr. Wallach.

Mr. Wallach referred Mr. Meese to Mr. Chinn shortly after Mr. Meese became the Attorney General. At that time, Mr. Meese was endeavoring to fulfill his confirmation commitment to sell certain securities. In partial fulfillment of that commitment, Mr. Meese sent almost all of his and Mrs. Meese's holdings to Mr. Chinn in May 1985. Mr. Chinn

^{5/} Mr. Wallach met Mr. Chinn through Mr. Wallach's former landlord, Dr. Rusty Kent London. Mr. Wallach began using Mr. Chinn as his money manager in December 1984, and invested the \$300,000 advance from Wedtech for 1985 and 1986 services in an investment partnership with Mr. Chinn.

At about the same time, Mr. Wallach introduced both Mr. Chinn and Dr. London to Wedtech. On April 30, 1985, Mr. Chinn and Dr. London became consultants to Wedtech with responsibility for maintaining the value of the company's stock and improving management. In August 1985, Mr. Chinn was elected a director of Wedtech.

established brokerage accounts for the Meeses, and sold their securities for \$54,581. The proceeds from the sale of securities were transferred into new accounts and invested by Mr. Chinn in the name of a new investment partnership, Meese Partners.

The Meeses formed Meese Partners with Mr. Chinn effective May 23, 1985. Mr. and Mrs. Meese were limited partners; Financial Management International, Inc., a company wholly owned by Mr. Chinn, was the general partner. The general partner did not have a financial interest in the partnership. Except for language added to make the arrangement "blind," the Meese Partners agreement was identical to Mr. Chinn's agreement with Mr. Wallach of December 1984. The Meese Partners agreement expressly provided that Mr. Chinn could use "aggressive" investment and trading techniques.

Mr. and Mrs. Meese's assets were invested through Meese Partners from July 10, 1985, through June 30, 1987. The partnership had a net return of \$30,943, with an overall annual rate of return of approximately 24.8 percent.

Mr. Chinn invested his customers' assets, including the assets of Meese Partners, in money market funds with the brokerage firm and bank that he used to process all of his securities transactions. He actively purchased new issues of securities from underwriters for all of his customers, and sold those securities on the day of their purchase. As a result of his trading strategy, Mr. Chinn had discretion to

allocate transactions among his customers after the results of the transactions were known.

The independent counsel learned of unusual transactions engaged in by Mr. Chinn which resulted in the transfer of money to Hong Kong and to England. To the extent that it was possible, the independent counsel fully explored those arrangements, and determined that Mr. Chinn's questionable activities did not provide any improper benefit to Mr. Meese.

The independent counsel also investigated the investment relationship between Messrs. Chinn and Meese, and Mr. Chinn's investment strategy on behalf of Meese Partners to determine whether, in light of Mr. Chinn's management discretion, Mr. Meese improperly received anything of value, directly or indirectly, through Meese Partners. Mr. Chinn and Mr. Wallach asserted their fifth amendment privileges not to be compelled to be witnesses against themselves. Consequently, their critical testimony on this matter is currently unavailable. Moreover, Mr. Chinn's failure to maintain certain routine business records further handicapped the independent counsel's investigation. In spite of these obstacles, the independent counsel has reconstructed what is believed to be reasonably complete information relating to Mr. Chinn's handling of customer accounts from early 1985 through May of 1987.

The evidence shows that Meese Partners did not receive a better overall net return on its investments than

Mr. Chinn's other comparable customer, MPVC Partners. It does appear, however, that Meese Partners may have received slightly preferential handling over the course of its day-to-day management, through a consistent allocation of profitable trades in desirable hot issues. The independent counsel did not obtain any evidence that Mr. Meese had any knowledge of the management of Meese Partners or of Mr. Chinn's questionable trading practices.

The independent counsel has determined that, while Mr. Chinn's services to Mr. Meese may have been unusual, there is no substantial evidence to conclude that any benefit that was accepted in this regard by Mr. Meese from Mr. Chinn, or from Mr. Wallach, was an unlawful gratuity under 18 U.S.C. § 201.6/

6/ The independent counsel also concluded that Mr. Chinn's questionable trading activities may constitute law violations in the United States and Hong Kong. These activities were discovered during the independent counsel's investigation into the circumstances surrounding the apparent existence of a "Meese" account in Hong Kong among accounts used by Mr. Chinn to report trades on the "Loco London Gold" market.

The independent counsel's investigation involved extensive contacts, coordination, and cooperation with law enforcement authorities in Hong Kong and the production of many documents from banking and brokerage institutions in Hong Kong, Hawaii, California, and New York. From these documents, the independent counsel has assembled evidence of what appears to be a commission rebate fraud by Mr. Chinn as well as evidence of a related scheme involving fictitious gold trading to facilitate the international transfer of money apparently obtained for this possible commission rebate fraud. Violations of tax, securities, and possibly other federal criminal laws are implicated by this alleged scheme.

(Footnote Continued)

**III. MR. MEESE'S PARTICIPATION IN TELECOMMUNICATIONS
MATTERS BEFORE THE DEPARTMENT OF JUSTICE**

During Mr. Meese's confirmation hearings in January 1985, he stated that over the course of four years in Washington, D.C., he had learned a great deal "about how people view things, or how people might view things." He added:

And I can assure you that I have a much higher level of sensitivity to these matters now than I did when I arrived in Washington. And I can assure you that I would take great pains to avoid any kind of a situation or circumstance that might give rise to a misunderstanding or a misinterpretation of my acts or what I intended.

Mr. Meese promised the Senators, among other things, that he would sell certain securities, including AT&T and regional Bell operating company (RBOC) stock, and that he would advise the Office of Legal Counsel and the Office of Professional Responsibility in the Department of Justice of all his financial holdings.

When Mr. Meese sent the securities to Mr. Chinn in 1985, Mr. Meese was unable to locate the RBOC stock certificates. On May 23, 1985, he and Mrs. Meese executed a Transfer of Property document which purported to transfer to Mr. Chinn

(Footnote Continued)

The independent counsel is referring these matters pertaining to Mr. Chinn and others to the Department of Justice Tax Division for further investigation and possible prosecution.

all of Mr. and Mrs. Meese's right, title and interest in the RBOC stocks. However, as a matter of law, the Transfer of Property document was insufficient to transfer ownership of the stock, and Mr. and Mrs. Meese continued to retain both equitable and legal title in the securities. Mr. and Mrs. Meese's continued ownership of the RBOC stock was evidenced by their receipt of quarterly and annual reports, as well as dividend checks, which they did not cash until the securities were sold in September 1987.

Mr. Meese, knowing that he had a financial interest in the RBOCs, nevertheless personally and substantially participated in two particular telecommunications matters as Attorney General before he belatedly sought and received from the White House in January 1987 a prospective statutory waiver of the prohibition against participation in RBOC matters in which he had a financial interest.

On October 17, 1985, Assistant Attorney General for Antitrust, Douglas H. Ginsburg, sought and received Attorney General Meese's approval of a plan for the formulation of a report to the Court in connection with the Court's triennial review of the AT&T consent decree.

In late May 1986, Mr. Ginsburg sought and received Attorney General Meese's approval of proposed telecommunications legislation. The proposed legislation was designed to shift from the Court and the Department of Justice to the

Federal Communications Commission the responsibility for administration of the consent decree.

There was a real possibility that the market value of the RBOC stock would be affected by the outcome of each of these two matters. Moreover, the evidence supports the conclusion that Mr. Meese knew of his financial interest in each matter. After a full investigation, the independent counsel has determined that a trier of fact would probably conclude beyond a reasonable doubt that the approvals constituted personal and substantial participation by Mr. Meese in two particular matters in which, to his knowledge, he had a financial interest, in violation of 18 U.S.C. § 208. The independent counsel has determined, however, that a criminal prosecution of Mr. Meese for those violations is not warranted under the particular facts of this case.

IV. MR. MEESE'S FAILURE TO DISCLOSE THE SALE OF SECURITIES ON HIS 1985 FEDERAL INCOME TAX RETURN

As indicated above, Mr. Meese transferred most of his securities to Mr. Chinn in May 1985, and Mr. Chinn sold the securities in May and June, 1985 for \$54,581.

In 1986, when Mr. Meese was required to report the sales transactions and resulting capital gains on his 1985 federal income tax return, Mr. Meese obtained two extensions of the filing deadline. When he filed his 1985 income tax return on October 15, 1986, he failed to report any capital

gain from the sale of securities or to make any reference to the securities sales. Over fifteen months later, on February 6, 1988, the Meeses filed an amended 1985 income tax return in which they reported a capital gain of \$14,606 and paid a tax of \$2,454, plus interest, on the 1985 sale of securities. Through an accounting error, the amended return incorrectly reported the amount of capital gains and taxes. The amount of capital gain reported should have been \$20,706, resulting in taxes of \$3,479.

In summary, the independent counsel's investigation of the circumstances surrounding the preparation and filing of the 1985 income tax return revealed the following:

On or about October 7, 1986, approximately one week before the final October 15, 1986 filing deadline, Mr. Meese, for the first time, informed his accountant of the May and June 1985 securities sales. He also informed his accountant that he had not obtained the information needed to report these transactions, and discussed with his accountant how to proceed with the filing of his tax return. Mr. Meese and his accountant decided that, if the information was unavailable by the filing deadline, the return would be filed without any reference to the sales transactions, and that an amended return would be filed when Mr. Meese furnished the information.

On October 13, 1986, Mr. and Mrs. Meese signed and sent to their accountant a blank federal income tax return,

together with the data needed for completing the return except for the information relating to the securities sales.

Mr. Meese knew that October 15, 1986, was the filing deadline, and was the date on which his reporting and payment obligations had to be satisfied. He also knew that his return as filed would omit material facts, and would not be accompanied by any payment of taxes attributable to the securities sales. That was how the return was actually filed.

Mr. Meese did not collect and provide his accountant with complete information, from which he could calculate Mr. Meese's tax obligation on the capital gains, until late 1987, more than one year later, despite repeated efforts by his accountant to obtain that information from him.

The independent counsel has determined from the available evidence that a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese violated 26 U.S.C. § 7206(1) by willfully filing a materially false tax return, and that Mr. Meese violated 26 U.S.C. § 7203 by willfully failing to pay his income tax when due. Nevertheless, for the reasons set forth in the legal analysis, the independent counsel has concluded that these violations do not warrant prosecution.

**V. THE BENDER FOUNDATION'S FUNDING OF A JOB
AT A CHARITABLE ORGANIZATION FOR MRS. MEESE
AT MR. WALLACH'S REQUEST**

The independent counsel investigated an arrangement by Mr. Wallach and Howard M. Bender, a Washington, D.C.

businessman, whereby Mrs. Meese's salary at the National Capital Chapter of the Multiple Sclerosis Society (the Chapter) was funded by Mr. Bender's charitable organization, the Bender Foundation. Because Mrs. Meese's salary was deposited into Mr. and Mrs. Meese's joint checking account, the independent counsel considered whether this job opportunity constituted an unlawful gratuity accepted by Mr. Meese in violation of 18 U.S.C. § 201.

In December 1985, Mrs. Meese obtained a \$40,000-per-year position with the Chapter. Prior to her obtaining that position, she had been an active and productive volunteer for the Chapter since 1981. Funds earmarked for Mrs. Meese's salary were provided by a grant to the Chapter by the Bender Foundation.

Mr. Bender, Chairman of the Board of Blake Construction Co. Inc. (Blake Construction), was also a principal in real estate partnerships which purchased, managed, and sold buildings in the Washington, D.C., metropolitan area. In December 1984, one of Mr. Bender's partnerships purchased the Chester Arthur Building; Blake Construction was the managing and leasing agent for the partnership.

On September 30, 1985, Blake Construction learned of a problem with one of the Chester Arthur Building's major tenants, the Department of Justice. The Department of Justice was seriously considering not renewing a 10-year lease due to

expire in March 1986. This development caused serious concerns for Mr. Bender's representatives because a refusal by the Department of Justice to renew the lease on favorable terms would likely have serious financial repercussions for Mr. Bender and Blake Construction.

In late June 1985, Mr. Wallach first discussed Mrs. Meese's need for a new job with his friends Howard and Sondra Bender. At that time the Benders suggested to Mr. Wallach that Mrs. Meese might host public interest programs on a Washington, D.C. radio station owned by the Benders. Although Mr. Bender said he would arrange a meeting between Mrs. Meese and the radio station manager, those arrangements were not made until early October, 1985.

The independent counsel investigated whether there was any connection between the renewal of the Department of Justice lease with Blake Construction and Mr. Bender's decision, at Mr. Wallach's request, first to offer Mrs. Meese a job at his radio station, and later to donate \$40,000 in payment of her salary through the Bender Foundation. In summary, the investigation revealed the following:

In early October 1985, Mr. Bender telephoned the station manager and asked him to interview Mrs. Meese. The station manager informed the office of independent counsel that Mr. Bender rarely became involved with the radio station operations.

Mrs. Meese, accompanied by Mr. Wallach, was interviewed by the station manager. She later decided not to accept employment at the station.

In mid-October 1985, Mrs. Meese and the Executive Director of the Chapter decided to suggest to the Benders that the Bender Foundation fund the salary of a position for Mrs. Meese at the Chapter.

After Mrs. Meese informed Mr. Wallach of this suggestion, Mr. Wallach urged the Benders to fund Mrs. Meese's salary, and recommended a grant in the amount of her current financial need for an annual salary of \$40,000, which was the salary she had earned in her prior job.

The Benders agreed that the Bender Foundation would make a grant of \$40,000 to the Chapter for the purpose of funding Mrs. Meese's salary. The Bender Foundation in prior years had made grants to the Chapter of between \$1,000 and \$4,000, but it had ignored a solicitation from the Chapter for \$10,000 in April 1985.

In December 1985, Mrs. Meese asked for and received a salary advance of \$15,000 from the Chapter to pay year-end expenses, and deposited that money (and future salary checks) in a joint bank account she maintained with Mr. Meese.

At the time Mr. Wallach was arranging for the Benders to fund a job for Mrs. Meese, he introduced Mr. Jenkins, Mr. Meese's former deputy at the White House, to Mr. Bender with the suggestion that Mr. Jenkins could, among

other things, work on Mr. Bender's lease renewal problems with the Department of Justice.

Mr. Bender himself hired Mr. Jenkins as a consultant to Blake Construction for one year beginning in December of 1985. Mr. Jenkins, through an associate, made unproductive inquiries of the General Services Administration about the status of the Chester Arthur Building lease.

In late December 1985, the Department of Justice agreed that the lease with the Bender partnership would be renewed.

There is no evidence that Mr. Jenkins or any other representative of Mr. Bender had any contacts with Mr. Meese or with the Office of the Attorney General relating to the lease renewal. There also is no evidence that Mr. Meese or the Office of the Attorney General was in any way involved in the lease renewal.

Although Mr. Wallach and Mr. Bender may have had ulterior motives in taking the actions described above, the available evidence obtained by the independent counsel does not support a conclusion that Mr. Meese was aware of such motives. The independent counsel also has determined that Mr. Meese did not perform any official act for the benefit of Mr. Bender or any of his business entities in violation of any federal criminal law.

VI. INVESTIGATION OF MR. MEESE'S FINANCES

The independent counsel reviewed Mr. Meese's financial disclosure forms and related actions taken by him to fulfill his obligations under the Ethics in Government Act. Although the financial disclosure forms and related documents submitted by Mr. Meese contained certain inaccuracies, Mr. Meese's actions in this respect did not rise to the level of criminal conduct.

A full investigation of financial transactions of Mr. and Mrs. Meese since 1980 was conducted by Internal Revenue Service agents assigned to the staff of the independent counsel. A complete set of records of the financial affairs of the Meeses was assembled and thoroughly examined by the independent counsel. The financial records of Mr. and Mrs. Meese did not evidence any unexplained income or expenditure, unusual asset, concealed transaction or any other unexplained improvement in their financial condition since 1980.

After a less extensive analyses of currently available financial records for the transactions of Mr. Wallach, Mr. Chinn and Dr. London, the independent counsel has determined that there is no evidence of any payments directly or indirectly to Mr. Meese. However, complete information could not be obtained from Messrs. Wallach, Chinn and London as a result, in part, of their assertion of the privilege against self-incrimination.

**VII. BENEFITS GIVEN AND RECEIVED BY MR. MEESE
AND MR. WALLACH**

The independent counsel also developed information of benefits provided by Mr. Wallach to Mr. Meese and by Mr. Meese to Mr. Wallach during the relevant period of time for the purpose of determining whether or not Mr. Meese performed any official act on behalf of Mr. Wallach in violation of 18 U.S.C. § 201 or 18 U.S.C. § 211.

Some of the actions taken by Mr. Wallach that benefited Mr. Meese have previously been mentioned. They included: Mr. Wallach's introduction of Mr. Meese to Mr. Chinn; Mr. Wallach's role in obtaining the funding by the Bender Foundation of Mrs. Meese's position with the Multiple Sclerosis Chapter; and Mr. Wallach's representation of Mr. Meese in connection with Mr. Stein's independent counsel investigation for a court-awarded fee which was less than Mr. Wallach claimed for his services.

The independent counsel also discovered evidence of other actions taken by Mr. Wallach that benefited Mr. Meese. There is evidence that Mr. Wallach assisted Mr. Meese in securing two bank loans at conventional terms: one loan for \$80,000, obtained within the space of one day, September 14, 1983; the other, a \$260,000 mortgage loan on Mr. and Mrs. Meese's residence, obtained on July 2, 1986.

There also is evidence that Mr. Wallach provided gifts, meals, entertainment and other favors to Mr. and Mrs. Meese during the relevant period of time. The amount of

money involved was not insubstantial; however, it was not extraordinary in the context of the longstanding friendship between Mr. Meese and Mr. Wallach.

Several official acts performed by Mr. Meese were directly or indirectly beneficial to Wedtech or to Mr. Wallach. They included the assistance provided Welbilt in 1981 and 1982 in its efforts to obtain the small engine contract; the intercession by Mr. Meese with Secretary Baldrige in connection with Welbilt's efforts to persuade the EDA to subordinate its interests to those of a private lender; and the actions taken by Mr. Meese to further the Aqaba pipeline project, which is discussed below.

Evidence discovered by the office of independent counsel also shows that Mr. Meese arranged for the nomination of Mr. Wallach by the President to a position on the United States Advisory Commission on Public Diplomacy, a prestigious post which Mr. Wallach held from 1982 through January 1988.

In addition, Mr. Meese was instrumental in Mr. Wallach's presidential appointment first as the alternate United States Delegate to the United Nations Human Rights Commission in January 1986, and later, in October 1986, as the Representative of the United States on the Commission.

After thoroughly examining all of the evidence pertaining to benefits given and received by Mr. Meese and Mr. Wallach, the independent counsel has determined that the

evidence is insufficient to conclude that any of the official acts performed by Mr. Meese that directly or indirectly benefited Mr. Wallach violated 18 U.S.C. §§ 201, 211 or any other federal criminal law.

VIII. MR. MEESE'S INVOLVEMENT IN THE AQABA PIPELINE PROJECT

In the course of obtaining documents from the Office of the Attorney General, the independent counsel learned that Mr. Wallach and Mr. Meese were involved during 1985 in the Aqaba pipeline project. The independent counsel investigated the question whether their conduct violated the Foreign Corrupt Practices Act, and whether certain official acts Mr. Meese performed in connection with the project were rewarded by unlawful gratuities from Mr. Wallach.

Bechtel Great Britain, Ltd., one of the Bechtel Group of companies (Bechtel), proposed to Iraq and Jordan in 1983 that a pipeline be constructed from Kirkuk, Iraq, to the Jordanian port of Aqaba. Both Iraq and Jordan were receptive to the proposal; however, Iraq expressed fears that Israel might attack the pipeline.

Iraq's fear increased as negotiations on the proposed pipeline progressed. By mid-1984, Iraq was insisting that prospective lending agencies agree in advance to forgive Iraq's construction financing obligations during any interruption of the pipeline's construction or operation caused by an Israeli hostile act. Bechtel determined that this was an

impossible demand to satisfy and, by November 1984, concluded that the project would never succeed.

Bruce Rappaport, a wealthy Swiss industrialist and financier, learned of Bechtel's problem and approached the company with a solution. In January 1985, Mr. Rappaport proposed to Bechtel that he obtain from his friend, Prime Minister of Israel Shimon Peres, a written guarantee of pipeline security. In addition, he asserted that he would assemble a fund to insure the debt service for the pipeline during any interruption caused by Israeli aggression.

Mr. Rappaport insisted in his discussions with Bechtel that the Government of Israel would require a quid pro quo for a written security guarantee. Mr. Rappaport then negotiated with Bechtel an exclusive oil lift agreement including a 10 percent discount. The agreement would generate substantial profits for him, a portion of which he intended to pay to Israel in satisfaction of the quid pro quo.

In February 1985, Mr. Rappaport obtained a letter from Prime Minister Peres in which Mr. Peres indicated a willingness to consider providing a security guarantee in the future.

After it became apparent that he could not obtain a financial commitment from Israel to guarantee payment of the pipeline financing, Mr. Rappaport decided to come to the United States to seek United States government support for the

project, and to develop an insurance fund with such government support.

Mr. Wallach was recommended to Mr. Rappaport as someone who could assist Mr. Rappaport in obtaining support from the United States government. In May 1985, Mr. Rappaport first met Mr. Wallach in Washington, D.C., and retained him to assist on the project. Within hours of that first meeting, Mr. Wallach contacted Attorney General Meese and sought his assistance in obtaining United States government support for financing a political-risk insurance fund to support an Israeli pipeline security guarantee.

The independent counsel investigated Mr. Meese's actions in response to this and later contacts by Mr. Wallach, as well as his response to others in connection with the Aqaba pipeline project. The investigation was hampered by several circumstances. Mr. Wallach asserted his privilege under the fifth amendment not to be a witness against himself. Mr. Rappaport was willing to give an unsworn preliminary interview in return for full immunity. Later, however, after entering into a cooperation agreement with the independent counsel, Mr. Rappaport was unwilling to answer questions under oath or agree to any additional interviews unless the independent counsel first agreed that he could not and would not be prosecuted for obstructing justice or willfully giving false statements during any interview. The independent counsel refused to grant Mr. Rappaport the requested blanket

immunity, and terminated the cooperation agreement. The investigation was further hampered by the unavailability of the testimony of key Israeli government officials, including current Foreign Minister Shimon Peres.^{7/}

In summary, the independent counsel's investigation of the Aqaba pipeline project revealed the following:

In late May or early June, 1985, Mr. Meese, knowing that Mr. Wallach was retained by Mr. Rappaport to assist him in connection with an overseas commercial enterprise, contacted National Security Advisor Robert C. McFarlane and requested that he meet with Mr. Wallach about the pipeline matter.

At the time of this first contact, the question of Mr. Meese's debt to Mr. Wallach for legal fees arising from Mr. Wallach's representation of Mr. Meese in an independent counsel investigation had not been resolved by the court.

It was highly unusual for a Cabinet officer to request Mr. McFarlane to meet with the Cabinet officer's friend about a matter of commercial interest to the friend.

^{7/} By contrast, the independent counsel received the full cooperation of Bechtel and its current and former employees; and from the White House, the National Security Council, the Department of State, the Department of Justice, the Overseas Private Investment Corporation, the Central Intelligence Agency, and others. These and other government agencies collected voluminous amounts of documentary evidence, assisted in the identification of potential witnesses, and reviewed documents for security classification decisions.

Mr. McFarlane regarded Mr. Meese as his superior and obliged Mr. Meese by agreeing to meet with Mr. Wallach.

Mr. McFarlane met with Mr. Wallach and Mr. Rappaport in June 1985, and gave his assurances that he and his staff at the National Security Council (NSC) would assist them in efforts to fund the insurance package.

Mr. McFarlane immediately assigned a senior staff member, Roger J. Robinson, Jr., to oversee the NSC efforts to obtain the requisite funding. Mr. Robinson worked diligently with the Overseas Private Investment Corporation (OPIC), a federal agency, and with Mr. Wallach in this endeavor. Mr. Rappaport and Mr. Wallach took it upon themselves to assemble a "salvage package" for the insurance fund. The salvage package was to be a readily available fund of money from which OPIC and another co-insurer could obtain reimbursement in the event Israel broke its commitment and damaged the pipeline.

Mr. Wallach kept Mr. Meese informed throughout the summer and fall of 1985 of the progress in assembling the political risk insurance package and a salvage package for the insurers. In promoting the project during this time period, Mr. Wallach met with Mr. Rappaport, United States government officials, Jordanian government officials, private lending institutions, and others.

In mid-August 1985, Mr. Wallach received a fee of \$150,000 for his services to Mr. Rappaport. At Mr. Wallach's

specific request, Mr. Rappaport wired the \$150,000 to Mr. Chinn's bank.^{8/}

In mid-September 1985, Mr. Rappaport obtained from Prime Minister Peres a hand-written letter from the Prime Minister addressed to Attorney General Meese. Mr. Rappaport summoned Mr. Wallach to Geneva to relate the circumstances of his receipt of the letter and to give Mr. Wallach the letter for delivery to Mr. Meese.

Mr. Peres told Mr. Meese in the letter that he was "following with great interest the projected pipeline from Iraq to Jordan as a possible additive to introduce economic consideration to this troubled land." He indicated that he "would go a long way to help [the pipeline project] out." The Prime Minister requested that Mr. Meese arrange a contact on the pipeline matter with the appropriate United States official. He ended by noting that he had "asked my friends Bruce and Bob to let you know the whole story," and would

^{8/} Expense reimbursements of approximately \$32,000 from Mr. Rappaport were concealed in Mr. Wallach's accounting records. Mr. Wallach failed to report the \$150,000 as income in 1985, or pay taxes on it, in possible violation of 26 U.S.C. § 7201. When the independent counsel requested production of certain of Mr. Wallach's federal income tax returns, Mr. Wallach informed his tax lawyer of the income, who promptly filed an amended income tax return in June 1987. The independent counsel is referring this matter pertaining to Mr. Wallach to the Department of Justice Tax Division for further investigation and possible prosecution.

"depend on [Mr. Meese's] judgment about the best way to handle this matter."

Mr. Wallach personally delivered the letter to Mr. Meese on or about September 25, 1985, along with two memoranda from Mr. Wallach to Mr. Meese of that date. The memoranda reiterated the history of the United States government involvement in the pipeline project since May of 1985. In the memoranda, Mr. Wallach explained the purported significance of, and sensitivities involved in, the Israeli security guarantee issue, and urged a direct United States commitment to the funding of the salvage package.

In one of the memoranda which was labeled "Personal and Confidential -- FOR YOUR EYES ONLY," Mr. Wallach emphasized Mr. Rappaport's ties to the Israeli Labor Party, and spoke in positive terms of the United States' interests in a strong Israeli Labor Party. Mr. Wallach wrote:

B.R. has been financing private polls for quite a long time in Israel on behalf of labor-Peres. They demonstrate an increasing strength for labor and the high probability of elections, no later than March 1986.

He confirmed the arrangement with Peres to the effect that Israel will receive somewhere between \$65-70 million a year for ten years out of the conclusion of the project. What was also indicated to me, and which would be denied everywhere, is that a portion of those funds will go directly to Labor.

In the second memorandum of September 25, 1985, Mr. Wallach told Mr. Meese of a "never-to-be-stated but fully

understood quid pro quo which helped to produce the commitment by the friendly country [Israel]" to the security package.

Upon receiving the Prime Minister's letter and Mr. Wallach's memoranda, Mr. Meese sought Mr. McFarlane's advice as to how to respond to Mr. Peres. Mr. Meese did not inform Mr. McFarlane of the alleged secret arrangement to provide the Israeli Labor Party with a portion of the oil pipeline profits.

After consulting with Mr. McFarlane, Mr. Meese sent a handwritten letter to Mr. Peres in which he suggested that Mr. Peres discuss the pipeline project with Mr. McFarlane. This exchange of correspondence and the second contact by Mr. Meese with Mr. McFarlane on this subject sparked renewed interest and activity by Mr. McFarlane and the NSC staff, despite reports from intelligence sources at the time that the Government of Iraq had lost interest in the Aqaba pipeline project and was developing, instead, two other pipeline projects.

NSC staff member David G. Wigg, Mr. Robinson's successor, accompanied Mr. Wallach to a meeting with the President of OPIC, Craig A. Nalen, at which Mr. Wallach made a new proposal for dealing with the salvage fund problem. Mr. Wallach proposed a novel plan whereby Israel would agree to assign to OPIC and the private co-insurer, Citibank, its "right" to future United States government foreign aid funds, if Israel disrupted the pipeline.

OPIC General Counsel Robert G. Shanks prepared a letter seeking a legal opinion on the matter from the Department of Justice. Mr. Wallach insisted that the letter be addressed only to the attention of Mr. Meese. When Mr. Shanks explained that the Department of Justice procedure was to route a request for a legal opinion to the Office of Legal Counsel, Mr. Wallach continued to insist, nevertheless, that the letter be addressed and sent only to Mr. Meese.

Meanwhile, Mr. Wallach solicited the assistance of Allan Gerson, Deputy Assistant Attorney General for the Office of Legal Counsel, whom Mr. Wallach had recommended Mr. Meese hire for that position. Mr. Wallach informed Mr. Gerson that OPIC would be sending a request for a legal opinion to the Attorney General, and that Mr. Gerson was to prepare a positive response to the request. Mr. Wallach advised Mr. Gerson that this was an extremely sensitive matter of importance to the Prime Minister of Israel, and that the project had the full backing of the NSC and of Mr. Meese. Mr. Wallach also cautioned Mr. Gerson that no one else except Mr. Wallach and the Attorney General should know that Mr. Gerson would be preparing the legal opinion for OPIC.

When Mr. Gerson informed Mr. Meese that he was working with Mr. Wallach on the legal opinion, Mr. Meese expressed awareness of the matter and sanctioned Mr. Gerson's actions.

Thereafter, Mr. Gerson drafted a memorandum of law responding to the request for a legal opinion. The Attorney General recalled that he may have shown the memorandum to Mr. Wallach. However, after Messrs. Gerson, Wallach and Meese learned that OPIC General Counsel Shanks had sent a blind copy of the request for the legal opinion to the Office of Legal Counsel, Mr. Wallach abandoned his foreign aid assignment proposal.

During this same time period, in mid-October 1985, Prime Minister Peres visited Washington, D.C., and New York City. During a reception at the Embassy of Israel in Washington, Messrs. Meese and Wallach together and separately engaged in private conversations with Mr. Peres in which the Prime Minister reiterated his personal interest in the pipeline project and his willingness to supply his government's guarantees on the security issue.

Within a week of the reception, Mr. Wallach and Mr. Wigg traveled to New York City and met privately with Prime Minister Peres. They presented him with a proposed letter of guarantee for his signature. This letter was redrafted by associates of Mr. Peres in consultation with Mr. Rappaport. Thereafter, on November 20, 1985, Prime Minister Peres sent a letter to Mr. McFarlane, in which he stated that his government was prepared to give the agreed guarantees with respect to the security of the Aqaba pipeline.

After the failure to obtain a favorable opinion from the Department of Justice for the use of United States foreign aid funds, Messrs. Wallach and Wigg decided to explore an alternative plan which also would have involved funding the insurance salvage package with United States government funds. From late October through mid-December, 1985, Mr. Wigg worked with two Department of Defense lawyers outside of regular channels to devise a novel plan whereby Israel would receive an additional appropriation of \$375 million in Foreign Military Sales (FMS) Assistance funds from the United States, and Israel would place the funds in an offshore escrow account. If Israel took no hostile acts against the pipeline, it could retain the \$375 million; if Israel damaged the pipeline by hostile action, the insurers could obtain reimbursement from the escrow account. The plan ultimately took the form of a proposed National Security Decision Directive (NSDD) for the signature of the President of the United States.

The proposed plan eventually was rejected by the new National Security Advisor, Admiral John Poindexter, upon the advice of a former National Security Advisor, Judge William P. Clark. Judge Clark characterized the Israeli security

guarantee arrangements and the proposed NSDD as a "protection racket."^{9/}

Mr. Wallach reported to Mr. Rappaport in December 1985 and February 1986 that "his friend" -- Mr. Meese -- would continue to support them on the project, despite "transition events (the departure of Mr. McFarlane in December 1985 as National Security Advisor), holidays, and other priorities" In December 1985, Mr. Wallach wrote that "I have assurance from my friend that if necessary, he will engage [a] new person on project." In February 1986, Mr. Wallach wrote to Mr. Rappaport that he "met with my friend, who will personally contact J.P. [John Poindexter] to arrange meeting for me, if it is necessary to obtain signature of his superior [President Reagan]" on the NSDD for the FMS plan.

Mr. Meese told the office of independent counsel that he did not recall contacting Mr. Poindexter on the matter, but that he may have told Mr. Wallach that he would make an introductory telephone call for him.

Although Mr. Meese told the office of independent counsel that he has no recollection of the specifics of any conversation with Mr. Wallach concerning the Aqaba pipeline project or of any of the details of Mr. Wallach's efforts in

^{9/} Judge Clark had been approached in the summer of 1985 by Messrs. Wallach and McFarlane to assist in the Aqaba pipeline matter, but did nothing to assist the project principally because of his concerns about Mr. Wallach's indiscretions.

connection with the project, he has a general recollection of Mr. Wallach's telling him through the winter of 1985, about his activities in connection with the pipeline matter.

The NSDD apparently was never presented to the President. The Aqaba pipeline was never built. When it became obvious in January and February, 1986, that Mr. Wallach could no longer deliver the necessary NSC support, Mr. Rappaport dispensed with his services.

The evidence developed by the independent counsel shows that Mr. Meese, upon learning from Mr. Wallach of Mr. Rappaport's statements about a promised covert payment to the Israeli Labor party, took no action to terminate United States government involvement in the Aqaba pipeline project or even to notify other United States government authorities of the possible existence of an illegal scheme. Instead, he took acts to further the commercial enterprise. Thus, if an illegal bribery scheme actually was afoot, as the Wallach memoranda suggested, Mr. Meese's actions would have furthered the scheme.

There is no direct evidence, apart from Mr. Wallach's September 25, 1985 memoranda, that a bribe was or would be offered to any official of the Israeli Labor Party. The independent counsel has determined that the available admissible evidence is insufficient to conclude that Mr. Meese's activities in furtherance of the pipeline project violated the Foreign Corrupt Practices Act.

LEGAL ANALYSIS

INTRODUCTION

This portion of the Report describes the legal analysis of whether any of the conduct of Mr. Meese investigated by the independent counsel violated any federal criminal law. It explains the reasons for the determination that in certain instances Mr. Meese's conduct probably violated the criminal law, but that no prosecution is warranted. It also describes the bases for the determination that, with respect to other conduct of Mr. Meese investigated by the independent counsel, there is insufficient evidence, or in certain instances no substantial evidence, to support a conclusion that Mr. Meese violated any criminal law.

In reaching the determinations described in this Report, the independent counsel has followed the requirement of 28 U.S.C. § 594(f) that he comply with the written or other established policies of the Department of Justice respecting enforcement of the federal criminal laws. A principal source of such policies is the United States Attorneys' Manual, published by the Department of Justice. Another important source of such policies has been the independent counsel's consultation with attorneys in the Criminal Division and the Tax Division of the Department of Justice.

In determining that certain of Mr. Meese's actions probably violated the criminal law, the independent counsel has considered the evidence that would likely be admissible in

a criminal trial, together with the inferences that may be drawn from that evidence, and has determined that, if the case otherwise warranted a prosecution, a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese committed the offense. By applying this standard, the independent counsel has conformed his determinations to the threshold standard for initiating a prosecution stated in the United States Attorneys' Manual, section 9-27.220.B (June 15, 1984): "[N]o prosecution should be initiated against any person unless the government believes that the person probably will be found guilty by an unbiased trier of fact."

The following is a summary of the determinations explained in the following legal analysis:

The independent counsel considered whether Mr. Meese's involvement as Attorney General in certain telecommunications matters of importance to the regional Bell operating companies (RBOCs) violated the prohibition of 18 U.S.C. § 208(a) against an official's personal and substantial participation in a particular matter in which, to his knowledge, he has a financial interest. The independent counsel has determined that Mr. Meese probably committed two violations of that criminal statute by personally and substantially participating in two RBOC-related particular matters in which, to his knowledge, he had a financial interest. The independent counsel has determined, however, that prosecution is not warranted.

The independent counsel considered whether Mr. Meese's failure to report required information concerning certain securities sales, and to pay the tax due on capital gains from those sales, when he filed his 1985 federal income tax return on October 15, 1986, was a willful failure to comply with his reporting and payment obligations under the Internal Revenue Code, despite his intention to file an amended return, which he subsequently filed. The independent counsel has determined that Mr. Meese probably violated 26 U.S.C. § 7206(1) by willfully filing a materially false tax return, and that he probably violated 26 U.S.C. § 7203 by willfully failing to pay tax on his capital gains when it was due. The independent counsel has determined, however, that prosecution is not warranted.

The independent counsel considered whether Mr. Meese, as Counselor to the President or as Attorney General, accepted anything of value for or because of any official act in violation of the bribery or gratuities provisions of 18 U.S.C. § 201, or accepted anything of value to use his influence to obtain a federal appointive position for another person in violation of 18 U.S.C. § 211. The independent counsel has determined that the available evidence is insufficient to support a conclusion that Mr. Meese violated any of these laws.

The independent counsel has considered whether Mr. Meese's actions in furtherance of the Aqaba pipeline

project were undertaken willfully and corruptly in furtherance of an authorization, offer, or promise to pay a bribe to a foreign official or political party in violation of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2. The independent counsel, based on the currently available information, has determined that there is insufficient evidence to conclude that Mr. Meese committed an offense under that Act.

I. REASONS FOR THE INDEPENDENT COUNSEL'S DETERMINATION THAT MR. MEESE PROBABLY VIOLATED 18 U.S.C. § 208(a), BUT THAT A PROSECUTION IS NOT WARRANTED

Title 18 U.S.C § 208(a) makes it a felony for an officer of the executive branch of the United States government to participate personally and substantially in a particular matter in which, to his knowledge, the officer, his spouse, or his partner has a financial interest.^{10/} The

^{10/} Subsection 208(a) provides as follows:

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination,

(Footnote Continued)

statute prohibits such participation whether or not the financial conflict of interest actually affects the official's actions.11/

(Footnote Continued)

contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as, officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest --

Shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

11/ Subsection 208(a) is rooted in the "authoritative declaration that no man can serve two masters." Michigan Steel Box Co. v. United States, 49 Ct. Cl. 421, 439 (1914), cited in United States v. Mississippi Valley Generating Co., 364 U.S. 520, 550 n.14 (1960). The statute "does not specify as elements of the crime that there be actual corruption or that there be any actual loss suffered by the Government as a result of the defendant's conflict of interest." Mississippi Valley, 364 U.S. at 549. The statute establishes an objective standard of conduct, id.:

whenever a government agent fails to act in accordance with that standard, he is guilty of violating the statute, regardless of whether there is positive corruption. The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government.

See also, United States v. Gorman, 807 F.2d 1299, 1304 (6th Cir. 1986), cert. denied, --- U.S. ---, 108 S.Ct. 68 (1987).

Congress has provided a mechanism in subsection 208(b) for the granting of a prospective waiver to permit otherwise prohibited participation in a matter when the circumstances support a determination that the official's financial interest is so insubstantial as to be unlikely to affect the integrity of his decision making.^{12/} Mr. Meese obtained such a waiver in 1982 to permit his participation in certain telecommunications matters while he was Counselor to the President. That waiver did not cover his activities when he became Attorney General.^{13/}

^{12/} Subsection 208(b) provides as follows:

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. . . .

^{13/} The independent counsel has concluded that, as a matter of law, the 1982 waiver no longer was valid after Mr. Meese
(Footnote Continued)

Mr. Meese, at the relevant times, was an officer of the executive branch. Thus, the independent counsel's evaluation of Mr. Meese's conduct under subsection 208(a) focused on the other elements of the statute: whether he personally and substantially participated in a particular matter in which, to his knowledge, he had a financial interest. The independent counsel has determined that a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese violated subsection 208(a) by personally and substantially participating in two particular matters involving the regional Bell operating companies (RBOCs) at a time when, to his knowledge, he had a financial interest in those particular matters. The independent counsel has determined, however, that these probable offenses do not warrant prosecution.

(Footnote Continued)

left his position as Counselor to the President. A subsection 208(b) waiver necessarily is directed to the participation of a government official in his official capacity. The 1982 waiver was sought and granted to cover Mr. Meese's official action as Counselor to the President, and provided clearance for him to participate in certain matters in that official capacity. When Mr. Meese became Attorney General, the waiver for his participation as Counselor to the President no longer applied. Moreover, the particular matters encompassed by the 1982 waiver were not the same as those in which Mr. Meese participated as Attorney General, and the financial interests considered for the 1982 waiver were not the same as the financial interests Mr. Meese had while he was Attorney General. Subsection 208(a) does not require that the violator have a specific understanding that his conduct violates the law. Thus, even if Mr. Meese erroneously believed that the 1982 waiver covered his actions as Attorney General, that belief would not be a defense.

A. Mr. Meese's Personal and Substantial Participation in Two Particular Matters

The evidence supports the conclusion that, under the governing legal standard, Mr. Meese participated personally and substantially in two particular matters within the meaning of subsection 208(a).

1. The Two RBOC-Related Particular Matters

The particular matters covered by subsection 208(a) included: (1) the development of the January 1987 Department of Justice report and recommendations to the District Court for the District of Columbia,^{14/} Judge Harold H. Greene presiding, in connection with the triennial review of the Modification of Final Judgment (MFJ), which put into effect the settlement of the lawsuit seeking to break up AT&T; and (2) the development of the proposed Federal Telecommunications Policy Act of 1986.

a. Particular Matter of the Report To the Court in Connection with The Triennial Review of the Modification of Final Judgment

The legislative history of section 208(a) describes a "particular matter" as "comprehensive of all matters that

^{14/} Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Operating Companies by the Modification of Final Judgment (February 2, 1987). Because this report was scheduled to be filed in January 1987, it was referred to within the Department of Justice during its development as the January 1987 report and it is referred to in that fashion in this Report.

come before a Federal department or agency."^{15/} The decided cases give the term an equally broad meaning. United States v. Jewell, 827 F.2d 586 (9th Cir. 1987); United States v. Irons, 640 F.2d 872 (7th Cir. 1981). Accordingly, the January 1987 Department of Justice report and recommendations to the Court in connection with the triennial review of the MFJ was a particular matter.

This interpretation is confirmed by examining the specific examples of particular matters listed in subsection 208(a). One of them is a "request for a ruling or other determination." The January 1987 report, which recommended specific changes in the MFJ, was substantially similar to a request for a ruling or other determination. It is unmistakably within the inclusive statutory phrase, "or other particular matter."

It is established by the decided cases that "participation" in a particular matter covered by the statute includes participation at any stage in the course of a particular matter's development. United States v. Jewell, supra (acts leading up to formation of a contract and acts in execution of the contract); United States v. Irons, supra

^{15/} H.R. Rep. No. 87-748, 87th Cong., 1st Sess. 20 (1961). This was the House Report accompanying the 1962 legislation that enacted subsection 208(a) in its present form. The Senate Report accompanying that legislation states that particular matter encompasses "the whole range of matters in which the government has an interest." S. Rep. No. 87-2213, 87th Cong., 1st Sess. 12 (1961).

(acts in execution of a contract). Thus, the entire course of development of the January 1987 Department of Justice report to the Court was part of a single particular matter within the meaning of subsection 208(a).^{16/}

**b. Particular Matter of the Proposed
Federal Telecommunications
Policy Act of 1986**

The proposed Federal Telecommunications Policy Act of 1986 was drafted by the Antitrust Division of the Department of Justice, was approved by Attorney General Meese, and was introduced in Congress by Senator Robert J. Dole. Subsection 208(a) does not expressly include "legislation" among the listed particular matters. However, the statutory phrase "or other particular matter" encompasses legislation. This interpretation is consistent with the broad construction given to that statutory term by the Jewell and Irons cases, supra, and by the cited legislative history. It also is in accord with the interpretation of subsection 208(a) consistently followed by the Criminal Division and Office of Legal Counsel of the Department of Justice and by the Office of Government Ethics (OGE).^{17/} The entire course of

^{16/} The triennial review itself was a "particular matter" because the statute includes a "judicial proceeding" in its list of particular matters.

^{17/} The independent counsel understands this from consultation with attorneys within the Department of Justice
(Footnote Continued)

development of the proposed Federal Telecommunications Policy Act of 1986 was a single particular matter within the meaning of subsection 208(a).

**2. Mr. Meese's Personal and
Substantial Participation**

Mr. Meese's participation in the two particular matters was personal and substantial within the meaning of the statute.

**a. Mr. Meese's Personal and Substantial
Participation in the January 1987
Report to the Court**

Mr. Meese participated personally and substantially as Attorney General in the particular matter of the January 1987 report to the Court when, on October 17, 1985, Assistant Attorney General Douglas H. Ginsburg sought Mr. Meese's approval, and Mr. Meese gave his approval, for Mr. Ginsburg's proposed approach to formulating that report.

The independent counsel has applied the definition of the phrase "personally and substantially" stated in the OGE regulations that define the identical phrase contained in 18 U.S.C. § 207(a). 5 C.F.R. § 737.5(d)(1). As stated in those regulations, to participate "'personally' means directly, and includes the participation of a subordinate when actually

(Footnote Continued)

and the Office of Government Ethics, and by examining OGE opinions. See, e.g., OGE 81X1, Letter to a Designated Agency Ethics Official, dated January 9, 1981.

directed by the . . . Government employee." To participate "substantially" means "that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. . . . While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial."^{18/}

Mr. Meese's approval of Mr. Ginsburg's proposals for the development of the January 1987 report was a critical step in that particular matter. Mr. Ginsburg has told the office of independent counsel that without Mr. Meese's approval he would not have proceeded with his proposed approach for the report. Thus, Mr. Meese's approval was a personal act that constituted substantial participation in the matter within the meaning of subsection 208(a).^{19/}

^{18/} United States v. Irons, 640 F.2d 872 (7th Cir. 1981), adopted OGE's broad interpretation of the phrase "personal and substantial participation."

^{19/} It is irrelevant to the question of personal and substantial participation whether the January 1987 report would have had the same content without Mr. Meese's participation. A violation of subsection 208(a) may occur even if an official's personal and substantial participation in a particular matter does not in fact have any impact on the matter. See 5 C.F.R. § 737.5(d)(1).

It also is irrelevant to the legal question of Mr. Meese's personal and substantial participation that Mr. Meese finally approved the report in January 1987 after obtaining a waiver under subsection 208(b), which permitted that action. That waiver was prospective only. It assured only that

(Footnote Continued)

Mr. Meese's meetings with and memoranda from his subordinates may have constituted direction and control of his subordinates sufficient to attribute their actions to Mr. Meese for the purpose of subsection 208(a). It is not material, however, whether Mr. Meese is found to have participated personally and substantially in one or several ways in a particular matter. It has been held that an official's entire personal and substantial participation in a particular matter constitutes at most a single offense. United States v. Jewell, supra.

b. Mr. Meese's Personal and Substantial Participation in the Proposed Federal Telecommunications Policy Act of 1986

During the spring of 1986, the Antitrust Division of the Department of Justice drafted legislation that would shift from the Court and the Department of Justice to the Federal Communications Commission the responsibility for administration of the MFJ. The legislation was eventually introduced in Congress as the proposed Federal Telecommunications Policy Act of 1986.

Mr. Meese participated personally and substantially as Attorney General in that particular matter when, in May 1986, he authorized Mr. Ginsburg to seek Administration

(Footnote Continued)

subsequent participation would not constitute criminal conduct.

support for the legislation outside the Department of Justice. Mr. Ginsburg has told the office of independent counsel that he would not have gone forward with the proposed legislation without Mr. Meese's approval.

B. Mr. Meese, to His Knowledge, Had a Financial Interest in the Two Particular Matters Affecting the Regional Bell Operating Companies

Under subsection 208(a), "a financial interest exists . . . where there is a real possibility of gain or loss as a result of developments in or resolution of a matter." United States v. Gorman, 807 F.2d 1299, 1303 (6th Cir. 1986), cert. denied, --- U.S. ---, 108 S.Ct. 68 (1987).^{20/} The

^{20/} Gorman followed an Office of Government Ethics (OGE) opinion interpreting subsection 208(a), 83 OGE 1, at p. 2 (January 7, 1983), which stated:

A government employee has a financial interest in a particular matter when there is a real possibility that he may gain or lose as a result of developments in or resolution of the matter. . . . Nor must the potential gain or loss be probable for the prohibition against official action to apply. All that is required is that there be a real, as opposed to speculative, possibility of benefit or detriment.

A financial interest need not be substantial to be encompassed by subsection 208(a). Exchange National Bank of Chicago v. Abramson, 295 F. Supp. 87, 91 (D. Minn. 1969) (subsection 208(a) "was intended to prohibit and does by its words prohibit a government employee from having any present or prospective financial interest in government decisions in which he participates"). The OGE opinion cited above stated
(Footnote Continued)

evidence supports the conclusion that Mr. Meese, to his knowledge, had such a financial interest in the particular matter of the January 1987 report and in the particular matter of the proposed Federal Telecommunications Policy Act of 1986.

1. **Mr. Meese, to His Knowledge, Had a Financial Interest in the RBOC Stock**

The evidence supports the conclusion that Mr. Meese had a financial interest in the RBOC stock at the time he personally and substantially participated in the RBOC-related particular matters, and that he knew about that financial interest at that time.

a. **Existence of Mr. Meese's Financial Interest in the RBOC Stock**

Part Three of this Report describes the circumstances in which Mr. and Mrs. Meese executed a Transfer of Property document, dated May 23, 1985, which purported to transfer all their right, title, and interest in the RBOC stock to Mr. Meese's money manager, W. Franklyn Chinn.^{21/}

(Footnote Continued)

the same interpretation: "It is not necessary that the potential gain or loss be of any particular magnitude." Ibid.

^{21/} The relevant provisions of the Transfer of Property document, which was signed by Mr. and Mrs. Meese but not by Mr. Chinn, stated as follows:

The undersigned, EDWIN MEESE III and
URSULA MEESE (hereinafter known as
"transferors"), hereby transfer to FRANK
CHINN (hereafter known as "transferee") all
(Footnote Continued)

Whatever may have been Mr. Meese's intentions when he requested his aide to draft the document, as a matter of fact and as a matter of law the document did not divest Mr. Meese of his financial interest in the RBOC stock. The document was created unilaterally by Mr. Meese without Mr. Chinn accepting its terms, or even knowing of its existence before he received it. By its terms, the document merely sought to have Mr. Chinn act as Mr. and Mrs. Meese's agent to sell the RBOC stock and to put the proceeds in the Meeses' account, just as he had agreed to do for Mr. and Mrs. Meese's other securities.

(Footnote Continued)

right, title and interest in the stocks listed below:

17 shares	Ameritech
17 shares	Bell Atlantic
17 shares	Bell South
17 shares	NYNEX
17 shares	Pacific Telesis
17 shares	Southwestern Bell
17 shares	U.S. West

Transferors shall provide to transferee the stock certificates representing the above-listed securities as soon as they are available.

The transfer is made with the understanding that the transferee shall dispose of the above-listed securities in such manner as he, in his sole descretion [sic], deems appropriate and shall transfer the proceeds of such sale to an account maintained by him for the benefit of transferors.

The document did not attempt, and was not intended, to shift the financial risk from Mr. Meese to Mr. Chinn. Under the Transfer of Property document, Mr. Meese retained the risk of gain or loss in the market value of the RBOC stock during the period between the document's execution and the contemplated sale of the stock by Mr. Chinn. Mr. Chinn never sold the stock because he never received the stock certificates from Mr. Meese. Therefore, Mr. Meese retained his financial interest in the RBOC stock, within the meaning of subsection 208(a), until September 1987, when Mr. Meese himself sold the stock and kept the proceeds.

b. Mr. Meese's Knowledge of His Financial Interest in the RBOC Stock

Whatever may have been Mr. Meese's intentions when he executed the Transfer of Property document, the relevant question under subsection 208(a) is whether Mr. Meese knew that he retained a financial interest in the RBOC stock in October 1985 and in May 1986, when he personally and substantially participated in the RBOC-related particular matters. Mr. Meese knew, at the very least, that he continued to bear certain risks of ownership of the RBOC stock. That is sufficient to meet the requirement of the statute.

Mr. Meese stated that he expected the transfer to proceed on a basis similar to the other transfers of securities for which Mr. Meese provided the certificates: Mr. Chinn would sell the securities and deposit the proceeds

into the Meeses' account. If Mr. Chinn waited a period of time before selling the RBOC stock, and the stock declined in value in the interim, Mr. Meese understood that any intervening loss in the market value of the stock would be borne by Mr. and Mrs. Meese, not by Mr. Chinn. The evidence is less clear whether Mr. Meese intended and expected that any appreciation in the stock's value before it was sold would accrue to the Meeses' benefit.

Mr. Meese stated that he expected to locate the RBOC stock certificates and send them to Mr. Chinn within a matter of weeks. Mr. Meese knew at the time that he personally and substantially participated in the two RBOC-related particular matters that he had not obtained the certificates necessary for Mr. Chinn to sell the stock. Mr. Meese also knew from his continued receipt of stock dividend checks and other RBOC literature that he retained title to the RBOC stock.^{22/}

^{22/} Additional evidence that Mr. Meese recognized the significance of his continued receipt of dividend checks is provided by Mr. Meese's treatment of the dividends after Mr. Chinn executed a document in July 1987 purporting to transfer all his rights in the RBOC stock back to the Meeses -- whatever those rights may have been. If Mr. Meese believed that the Transfer of Property document actually terminated his ownership of the RBOC stock in May 1985, Mr. Meese would have recognized that he was not entitled to any of the cash dividends that he received during the period following execution of the Transfer of Property document, until Mr. Chinn reversed the effect of the Transfer of Property document in July 1987. Mr. Meese evidently did not believe this because he subsequently cashed those checks and retained the proceeds of approximately \$1,500.

Mr. Meese knew that he continued to bear the risk of loss in the market value of the stock. That satisfied the legal standard stated in the Gorman case for determining whether Mr. Meese knew he had a financial interest in the RBOC stock.^{23/}

2. Mr. Meese, to His Knowledge, Had a Financial Interest in the Particular Matter of the January 1987 Report

The evidence supports the conclusion that Mr. Meese, to his knowledge, had a financial interest in the particular matter of the January 1987 report to the Court at the time he personally and substantially participated in that matter in October 1985.

a. Mr. Meese Had a Financial Interest In the Particular Matter of the January 1987 Report

Decisions made by the Department of Justice respecting the January 1987 report, whichever direction those decisions might have taken, were of sufficient economic importance that the market value of the RBOC stock could have been affected. Among the key issues involved in the triennial review, and in the recommendations of the January 1987 report,

^{23/} Mr. Meese's lack of knowledge about the meaning or scope of the term "financial interest" would be a claim of ignorance of the law and would be no defense to a violation of subsection 208(a). See, e.g., United States v. International Minerals & Chemical Corp., 402 U.S. 558 (1971).

was whether the RBOCs should be permitted to expand their operations into additional potentially profitable lines of business: information services, interexchange services, and equipment manufacturing. There was a real possibility that the market value of the RBOC stock would have been affected by the resolution of these matters one way or the other. Thus, under subsection 208(a), Mr. Meese had a financial interest in the particular matter of the January 1987 report to the Court.

**b. Mr. Meese Knew of His Financial
Interest in the Particular Matter
Of the January 1987 Report**

Mr. Meese was informed of the RBOCs' economic interest in the recommendations that would be made in the January 1987 report to the Court. He learned of this from memoranda sent to him by his subordinates in the Department of Justice, from letter and telephone communications he had with government officials outside the Department of Justice, including members of Congress and Secretary of Commerce Malcolm Baldrige, and from meetings and correspondence he had with representatives of AT&T and the RBOCs, including correspondence and discussion with Judge William P. Clark. Mr. Meese was therefore aware that he had a financial interest in the January 1987 report to the Court when, in October 1985, he personally and substantially participated in that particular matter.

3. Mr. Meese, to His Knowledge, Had a Financial Interest in the Particular Matter of the Proposed Federal Telecommunications Policy Act of 1986

The evidence supports the conclusion that Mr. Meese, to his knowledge, had a financial interest in the particular matter of the proposed Federal Telecommunications Policy Act of 1986 at the time he personally and substantially participated in that matter.

a. Mr. Meese Had a Financial Interest In the Particular Matter of the Proposed Legislation

Department of Justice officials, including Assistant Attorney General Ginsburg, were concerned about the Court's administration of the MFJ. They also were concerned about the imposition on the Department of Justice of substantial regulatory responsibilities in managing the process by which waivers from certain MFJ restrictions were granted to the RBOCs. Discomfort with the ongoing supervisory roles of the Court and of the Department of Justice in what the Department of Justice perceived to be an essentially regulatory matter led the Antitrust Division to draft the proposed Federal Telecommunications Policy Act of 1986. That proposed legislation was designed to resolve many of the Department of Justice's concerns by shifting regulatory responsibility from the Court and the Department of Justice to the Federal Communications Commission (FCC).

There is evidence of a consensus at that time among RBOC executives and industry observers that the change in regulatory responsibility contemplated by the proposed

legislation would benefit the RBOCs. It was believed that the FCC would be more likely than the Court to permit the RBOCs to expand into previously foreclosed lines of business, or that the FCC would do so sooner than the Court. The RBOC executives supported the proposed legislation because they believed that it was in the companies' economic interest to be regulated by the FCC rather than by the Court. The general view within the telecommunications industry that such a shift in regulatory responsibility would be of substantial benefit to the RBOCs created the probability that the market value of the RBOC stock would be affected by enactment of that proposed legislation. Because of that probable effect, Mr. Meese had a financial interest in that particular matter within the meaning of subsection 208(a).

b. Mr. Meese Knew of His Financial Interest in the Particular Matter Of the Proposed Legislation

Mr. Meese received information from a number of sources about the economic importance to the RBOCs of the proposed Federal Telecommunications Policy Act of 1986. Mr. Meese had been informed that the Department of Justice and the RBOCs were critical of Judge Greene's administration of the MFJ. Both a Biweekly Report dated January 24, 1986, and Mr. Ginsburg's memorandum to Mr. Meese dated January 27, 1986, described an opinion by Judge Greene adverse to the interests of the RBOCs. The Biweekly Report stated that Judge Greene was strongly opposed to any expansion of RBOC business

activities; Mr. Ginsburg's memorandum to Mr. Meese referred to the "court's clear hostility to the RBOCs' efforts to expand their nontelephone activities." The memorandum also stated: "The court's attitude on this point reflects a far more regulatory approach towards the decree than was intended by AT&T or the Department."

Notes taken of Mr. Meese's February 4, 1986 meeting with representatives of Ameritech reflect a discussion critical of the Court's administration of the MFJ. Mr. Meese was recorded as being "basically sympathetic" with Ameritech's concerns on this issue, and as saying that "courts [were] bad at running things."

Mr. Meese also received a letter from Judge Clark dated March 31, 1986, which stated: "Industry and commerce in California, particularly Pacific Telesis, look toward the good day when the entire responsibility for the process will shift from the Judiciary to the Executive Branch."

Mr. Meese therefore knew, from his staff, from Ameritech, and from Judge Clark, of the general dissatisfaction within the telecommunications industry with the Court's administration of the MFJ, and of the perceived benefit to the RBOCs that would result from the proposed Federal Telecommunications Policy Act of 1986. Mr. Meese therefore knew of his financial interest in the particular matter of the proposed legislation when he personally and substantially participated in the matter in May 1986.

**C. Reasons for the Independent Counsel's
Determination that a Criminal
Prosecution Is Not Warranted**

In deciding whether to prosecute a probable criminal offense, the independent counsel must "comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws." 28 U.S.C. § 594(f). In this regard, the United States Attorneys' Manual, in section 9-27.220.A (June 15, 1984), provides the following guidelines:

The attorney for the government should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless, in his/her judgment, prosecution should be declined because:

1. No substantial federal interest would be served by prosecution;
2. The person is subject to effective prosecution in another jurisdiction; or
3. There exists an adequate non-criminal alternative to prosecution.

In addition to these generally applicable guidelines, the United States Attorneys' Manual, in section 9-85.203 (March 30, 1984), provides guidelines specifically applicable to the prosecutive determination respecting violations of federal conflict of interest laws, including subsection 208(a):

Allegations of violations of the federal conflict of interest laws should be thoroughly investigated. Sufficient investigation should be conducted to establish proof or the absence of proof of a complaint or an allegation or to clearly show that the issue cannot be resolved. If investigation results in proof of an offense, the offender should be prosecuted unless there are strong reasons not to prosecute. The offender's failure to profit from his/her crime, and the fact that the offense did not involve fraud against the government are not appropriate reasons for declining to prosecute conflict of interest crimes. But, for example, when it is unquestionably clear that a petit jury would acquit the offender or if administrative disposition would be clearly more appropriate than prosecution, a decision against prosecution is justifiable.

For the reasons previously stated, the independent counsel has determined that a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese violated subsection 208(a). This raises a presumption in favor of prosecution under the guidelines specifically applicable to conflict of interest offenses. The independent counsel has determined, however, that a combination of facts and circumstances presents compelling reasons not to prosecute Mr. Meese for his probable subsection 208(a) offenses.

There is no evidence that Mr. Meese acted from motivation for personal gain. He took steps, albeit ineffective, to divest himself of his financial interest in the RBOC stock when he executed the Transfer of Property document. Within the meaning of subsection 208(a), Mr. Meese had knowledge that he retained a financial interest in the

RBOC stock and in the RBOC-related particular matters, but there is no evidence that he acted out of self-interest.

Mr. Meese did not in any way alter the course of Department of Justice policy through intervention in the RBOC-related particular matters. Although his personal and substantial participation in these matters satisfied that element of the subsection 208(a) offenses, there is no indication that the decision making process was changed, one way or the other, by Mr. Meese's participation. Had he recused himself from the matters, there is no reason to doubt that the subordinate who would then have been responsible for the decision would have acted essentially as Mr. Meese in fact did.

It also is pertinent that Mr. Meese had been granted a waiver under subsection 208(a) to participate in telecommunications matters when he was Counselor to the President, and that he also was granted such a waiver before finally approving the January 1987 report to the Court. The first waiver lapsed when Mr. Meese became Attorney General; the second waiver could not retroactively relieve Mr. Meese of criminal responsibility for any prior violation of subsection 208(a). Although the waivers do not provide a defense to the probable violations of subsection 208(a), they are relevant to the prosecutive determination. Mr. Meese's efforts to obtain such waivers indicated his awareness of the requirements of section 208 and reflected his attempts, albeit insufficient, to comply with the statute's requirements.

These factors do not exonerate Mr. Meese. Congress has declared in subsection 208(a) that it is a criminal offense for an official personally and substantially to participate in a particular matter in which he knows he has a financial interest. But Congress has not sought to limit the discretionary role of the prosecutor to determine whether or not a probable violation of the statute warrants prosecution. There is no substantial federal interest in prosecuting probable violations resulting from an official's participation in matters when a similar kind of participation by the individual was covered by waivers for periods both before and after the probable violations occurred, and when there is no evidence of deliberate circumvention of the waiver process, concealment of the financial interest, motivation for personal gain, or effect on government decision making.

An argument could be made that a prosecution of the Attorney General would serve as a significant deterrent to similarly situated public officials. The independent counsel has considered this argument, and has concluded that Mr. Meese's particular position in government should not be the determining factor in the prosecutive decision in a case in which, under all the particular facts and circumstances, a prosecution is not otherwise warranted. After consideration of all the pertinent factors, therefore, the independent counsel has determined that a prosecution of Mr. Meese is not warranted.

**II. REASONS FOR THE INDEPENDENT COUNSEL'S DETERMINATION
THAT MR. MEESE PROBABLY VIOLATED TWO PROVISIONS OF
THE INTERNAL REVENUE CODE, 26 U.S.C. §§ 7206(1), 7203,
BUT THAT A PROSECUTION IS NOT WARRANTED**

The independent counsel's examination of Mr. Meese's financial records included a review of his personal income tax returns. The review revealed that Mr. Meese's 1985 tax return filed on October 15, 1986, did not declare certain capital gains from the sale of securities in 1985, and that Mr. Meese did not pay income tax on his capital gains from those sales when he filed the return.

The independent counsel has determined from the available evidence that a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese violated 26 U.S.C. § 7206(1) by willfully filing a materially false tax return, and that Mr. Meese violated 26 U.S.C. § 7203 by willfully failing to pay tax at the time required by law. The independent counsel has determined, however, that under all the circumstances these probable violations do not warrant prosecution.

A. Relevant Facts

Part Four of this Report gives a full description of the available evidence respecting the preparation, filing, and amendment of Mr. Meese's 1985 tax return. The following are the most pertinent facts.

In May and June, 1985, Mr. Chinn sold securities for the Meeses and deposited the proceeds of \$54,581 in the

Meeses' account. Mr. Chinn reported the details of the sales to Mr. Meese in March 1986, prior to the April 15, 1986 deadline for filing the Meeses' 1985 tax return.

Mr. and Mrs. Meese realized a net capital gain of \$20,706 from these sales. They owed a tax of \$3,479, which was initially due on April 15, 1986.

At the Meeses' request, upon application of their accountant, John R. McKean, the Meeses were granted extensions of time for filing their 1985 tax return until October 15, 1986.

On or about October 7, 1986, Mr. Meese telephoned Mr. McKean to discuss with him the information Mr. Meese needed to provide to Mr. McKean for him to complete the Meeses' tax return. That telephone call is the only discussion the two men had immediately prior to the filing of the Meeses' tax return.

At that time, Mr. Meese told Mr. McKean that the securities were sold in 1985. He did not identify the securities or tell Mr. McKean the amount of sale proceeds or the cost (or other basis) of the securities, facts necessary to calculate the capital gain. Mr. Meese had not yet located or assembled that information. At all relevant times Mr. Meese had possession of, or could have obtained, the information needed to determine the proceeds and to establish the cost or other basis of the securities sold.

It is unclear to what extent, if at all, Mr. Meese and Mr. McKean discussed whether the securities sales had resulted in a capital gain, with additional tax liability. Mr. McKean was generally familiar with the nature and size of the Meeses' securities holdings. He believed that there probably had been a net capital gain, although he did not recall discussing the point with Mr. Meese during the telephone conversation. In general, stocks had appreciated very substantially since 1974 when the Meeses acquired most of the securities by inheritance from Mrs. Meese's mother. There is no direct evidence of Mr. Meese's belief as to whether there had been a capital gain on the sale of the securities.

At the time of the October telephone conversation, Mr. Meese was about to leave on a trip to Mexico for several days. The two men considered what should be done if Mr. Meese did not locate the required information. Mr. McKean suggested to Mr. Meese, and Mr. Meese agreed, that the return be filed by the October 15, 1986 deadline without any reference to the securities sales, and that an amended return disclosing the required information be filed as soon as possible. Mr. McKean stated or implied to Mr. Meese that this course of action was appropriate and responsible in the circumstances.

During the October 7 telephone conversation, Mr. McKean suggested that Mr. Meese might attempt to obtain certain basis information from the tax form filed with the Internal Revenue Service on behalf of the estate of Mrs.

Meese's mother. After that conversation, Mr. Meese had a member of his staff request that information from the attorney for the estate. That information was received by Mrs. Meese on October 13, 1986. It was not furnished to Mr. McKean, however, until January 1987.

Mr. Meese knew from about October 7, 1986, that unless he obtained the necessary information for Mr. McKean the securities sales would not be reported on the October 15 tax return and the tax would not be timely paid.

Following his telephone conversation with Mr. McKean, Mr. Meese went to Mexico as planned. He returned to the United States on or about October 13, 1986.

On or about October 13, 1986, Mr. Meese had certain tax information delivered to Mr. McKean's office, accompanied by a Form 1040 blank tax return signed by Mr. and Mrs. Meese. Mr. Meese did not see the completed return before it was filed. The information provided to Mr. McKean on or about October 13 did not include any information relating to the proceeds from the securities sales that Mr. Chinn had sent to Mr. Meese in March 1986, or any information relating to the cost or other basis of the securities.

The accountants' work papers for the October 15, 1986 tax return included the following notation referring to the securities sales: "Stocks and bonds were sold during 1985 but the information was unavailable for processing the 1985 tax return. When the information becomes available, we will file amended tax returns. We are assuming no gain or loss on the sales at this time." Mr. McKean has stated that the assumption of no gain or loss was not intended to reflect his own personal belief or expectation at the time, but rather was merely part of the reminder that an amended return had to be filed. The notation was not discussed with Mr. Meese.

The Meeses' 1985 tax return was filed on October 15, 1986. It did not declare any income from the securities sales. It did not indicate in any manner that the sales had occurred. Mr. Meese knew that the return was going to be filed without that information. The return included all other required information. It declared a total tax liability of \$23,503, declared total taxes previously paid of \$25,312, and claimed a refund of \$1,809, which the Meeses subsequently received. There is no evidence that either Mr. Meese or Mr. McKean knew that there would be a refund when they talked in early October 1986.

At the time his return was filed on October 15, Mr. Meese intended to file an amended return and to pay with that amended return whatever tax he owed on the securities

sales. He had no intention permanently to deprive the United States of any tax.

After the filing of the return, Mr. Meese gave a low priority to the task of locating the information needed to be included in an amended return. In early December 1986, Mr. McKean and Mr. Meese discussed the need for obtaining that missing information. Mr. McKean was convinced that Mr. Meese understood fully at the time that he had an obligation to gather the required information, and file an amended return as promptly as possible.

In May 1987, immediately after he was required to provide his tax returns to the independent counsel, Mr. Meese asked Mr. McKean whether the Internal Revenue Service had been notified of the intention to file an amended return. When Mr. McKean told him that the IRS had not been so notified, Mr. Meese asked Mr. McKean to write him a letter acknowledging the need for an amended return.

It was not until mid-December 1987 that Mr. Meese provided Mr. McKean with the last of the information required to prepare an accurate amended return. The amended return was sent to Mr. Meese at the end of January 1988, and was filed by Mr. Meese on or about February 6, 1988.

The amended return recognized \$14,606 in capital gains from the securities sales. Mr. Meese paid the tax due on that amount with interest. The amended return reflected a computational error by the accountants in calculating the

basis of AT&T stock sold in 1985. This error resulted in a \$6,100 understatement of capital gains.

**B. Section 7206(1): Willful Filing
Of a Materially False Tax Return**

The text of section 7206(1) of the Internal Revenue Code, 26 U.S.C. § 7206(1), is set out in the footnote.^{24/} Section 7206(1) makes it a felony willfully to file a tax return that the taxpayer knows is materially false.^{25/}

As relevant here, a section 7206(1) offense has the following four elements: (1) the taxpayer filed a tax return that was false as to some material matter; (2) the return contained a signed declaration that it was made under the penalties of perjury; (3) the taxpayer did not believe the

^{24/} 26 U.S.C. § 7206(1) provides in relevant part as follows:

Any person who --

(1) . . . Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter;

. . . .

shall be guilty of a felony . . .

^{25/} Section 7207 of the Internal Revenue Code, 26 U.S.C. § 7207 also prohibits -- as a misdemeanor -- materially false statements in tax-related documents. Although section 7207 is applicable to the filing of a materially false tax return, Sansone v. United States, 380 U.S. 343 (1965), it is usually applied in cases such as the filing of false business records.

return was true and correct as to every material matter; and (4) the taxpayer willfully subscribed to the false return. See e.g., United States v. Marabelles, 724 F.2d 1374, 1380 (9th Cir. 1984); United States v. Whyte, 699 F.2d 375, 381 (7th Cir. 1983).

Mr. Meese had a duty to report the securities sales and to declare his capital gains income on his tax return filed October 15, 1986.^{26/} Because that return did not disclose any information about the 1985 securities sales, it was materially false. It incorrectly stated the income and tax due without any notation or other reference explaining that those figures did not include any information about the securities sales.

The return contains Mr. Meese's signed verification that the return as filed was true and correct.^{27/} On October 13, 1986, when Mr. Meese furnished his accountants with the Form 1040 signed in blank, he knew that the return, as

^{26/} A taxpayer has a duty to report all of his income, including capital gains, and all information required by Internal Revenue Service forms. See 26 U.S.C. §§ 61(a)(3), 1201(b), 6011 and 6012.

^{27/} That verification provided:

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

completed and filed, would not contain any reference to the 1985 securities sales. Thus, prior to October 15, 1986, Mr. Meese knew that the return as filed would be materially false.^{28/}

The filing of a materially false return is "willful" within the meaning of section 7206 if the filing was "a voluntary, intentional violation of a known legal duty." United States v. Pomponio, 429 U.S. 10, 11-12 (1976) ("evil motive" or "bad purpose" is not required). Direct proof of willfulness is not necessary; the intent required by the statute may be shown by surrounding facts and circumstances. See, e.g., Holland v. United States, 348 U.S. 121 (1954). Whether Mr. Meese acted "willfully" in this case would be decided by the trier of fact based on the evidence.

The evidence shows that Mr. Meese was aware prior to October 15, 1986, that he had a legal duty to declare all his income on his tax return, including his income from the 1985 securities sales. The evidence also shows that Mr. Meese knew approximately eight days prior to the filing deadline that the return was not going to include any reference to the securities sales, and was therefore going to be materially

^{28/} The essential element of a section 7206(1) violation is that the taxpayer subscribed to a return knowing that the contents were or would be false, not that he read the contents before subscribing to the return. See United States v. Harper, 458 F.2d 891, 894-95 (7th Cir. 1971); cert. denied, 406 U.S. 930 (1972); United States v. Bass, 425 F.2d 161, 163 (7th Cir. 1970); United States v. Wainwright, 413 F.2d 796, 801-02 (10th Cir. 1969), cert. denied, 396 U.S. 1009 (1970); White v. United States, 216 F.2d 1, 5-6 (5th Cir. 1954).

false, unless he obtained the required information before the filing deadline. The return was filed in this manner because Mr. Meese did not furnish the omitted information to Mr. McKean. The decision to file the return without reference to those securities sales was voluntarily and intentionally made or approved by Mr. Meese during his telephone discussion with Mr. McKean on or about October 7, 1986.^{29/}

Mr. Meese's dilemma stemmed from his practice, followed throughout the period investigated by the independent counsel, of routinely requesting extensions of time from April 15 until October 15, the final deadline permitted by law. The four-month extension from April 15 to August 15 is automatically granted to a taxpayer upon the timely filing of an

^{29/} The willfulness requirement does not mean that Mr. Meese must have had a bad purpose or evil motive when he permitted a materially false return to be filed. Willfulness exists if Mr. Meese voluntarily and intentionally violated a known legal duty, even if he believed at the time that his action was reasonable. As explained in United States v. Sullivan, 369 F. Supp. 568, 569 (D. Mont. 1974):

A great many things in this modern world are bad or evil only because Congress says so, and Congress does have the power to declare what is bad in the exercise of its power to tax. There is nothing in the law which suggests that a man, to be guilty of a willful failure to file income tax returns, must be motivated to break some other law or to violate some Ten-Commandment-type ethic. If by congressional fiat it is bad to fail to file an income tax return, then a bad purpose may be found where the obligation to act is fully known and consciously disregarded.

application. Any additional extensions, up to a cumulative total of 60 days, are granted only for reasonable cause stated on an application filed prior to expiration of the previous extension.

In prior tax years, Mr. Meese was able to gather the necessary tax information very quickly once he turned his attention to the matter in late September or early October. This is an indication that Mr. Meese was abusing the extension process when he annually requested the maximum extension, not because he actually required the additional time, but because of his habit of procrastination in such matters and the higher priority he gave to other concerns.

For the 1985 tax year, however, it was more difficult than usual for Mr. Meese to gather the required information.^{30/} But again, Mr. Meese's procrastination brought him within a week of the October 15, 1986 deadline without his having taken any steps to gather the necessary information relating to the securities sales. Even at that

^{30/} Each year, the Meeses' application for an extension for reasonable cause, IRS Form 2688, was filed on Mr. Meese's behalf by Mr. McKean, who filled in the reason the extension was requested. The 1986 application for the extension of time from August 15 to October 15 stated the following reason: "Information regarding the 1985 tax return has yet to be received by the taxpayer from third parties. Additional time is required in order to file a complete and accurate return." Those reasons were different from the reasons stated on the comparable applications for the previous four years, which made no mention of the need to receive information from "third parties."

point, after his telephone conversation with Mr. McKean, Mr. Meese had a last opportunity to gather the required information, which he might have done if he had given a higher priority to the importance of his tax obligations.

Mr. Meese's procrastination and the low priority he gave to the gathering of tax information are not defenses to his failure to meet his tax reporting deadline.^{31/}

The evidence indicates that Mr. McKean stated or implied to Mr. Meese in their October 1986 telephone conversation that, in the situation in which Mr. Meese found himself, filing the return without reference to the securities sales, with the intention to file an amended return later, was an appropriate and responsible course of action in the circumstances. If a trier of fact were to conclude that Mr. Meese, as a result of Mr. McKean's suggestion, had a good faith misunderstanding about the law's requirement that his

^{31/} See United States v. Garman, 748 F.2d 218, 223-24 (4th Cir. 1984) (procrastination no defense), cert. denied, 470 U.S. 1005 (1985); Hull v. United States, 76-1 U.S. Tax Cas. (CCH) ¶ 9181, p. 83,293 (10th Cir. 1975) (procrastination no defense); United States v. Sullivan, 369 F. Supp. 568, 569 (D. Mont. 1974) (low priority given to tax matters no defense); United States v. Jasper, 352 F. Supp. 254 (D. Del. 1972) (procrastination no defense).

A large part of the needed information was found in the estate tax form received by Mrs. Meese on October 13, 1986, and in the sale transaction statements previously received from Mr. Chinn in March 1986. Most of the balance of the necessary information was found in a 1984 stock ledger which Mr. Meese gave to Mr. McKean in October 1987.

return must disclose the securities sales, that would negate the required element of willfulness. See United States v. Solomon, 825 F.2d 1292 (9th Cir. 1987), cert. denied, --- U.S. ---, 108 S.Ct. 782 (1988); United States v. Fitzsimmons, 712 F.2d 1196 (7th Cir. 1983).

It is not sufficient, however, merely that Mr. McKean suggested or even recommended this course of action to Mr. Meese.^{32/} Even the advice of a tax professional cannot be relied upon by a taxpayer if the taxpayer knows that he is receiving incorrect advice. See United States v. Boyle, 469 U.S. 241, 251 (1985):

[O]ne does not have to be a tax expert to know that tax returns have fixed filing dates and that taxes must be paid when they are due. In short, tax returns imply deadlines. Reliance by a lay person on a lawyer is of course common; but that reliance cannot function as a substitute for compliance with an unambiguous statute. . . . It requires no special training or effort to ascertain a deadline and make sure that it is met.

What is required for a good faith defense is that Mr. Meese held an honest, good faith belief that his tax reporting obligations would be satisfied if he did not include

^{32/} There is no evidence that Mr. McKean stated that the suggested course of action would constitute full legal compliance with Mr. Meese's tax reporting obligations. If given, this would have been incorrect advice. A taxpayer does not have discretion to postpone his reporting and payment obligations.

any reference to the securities sales on the October 15, 1986 tax return as long as he intended at the time to file an amended return containing the missing information.

Mr. Meese is a lawyer and a taxpayer of many years' experience. He obviously was aware that the Internal Revenue Code imposes filing deadlines, and that a taxpayer does not have the right to grant himself an extension of time, beyond the maximum extensions permitted by law, whenever the taxpayer believes he has a good reason. The independent counsel has determined that a trier of fact would probably reject a defense that Mr. Meese in good faith believed he was in full compliance with the law, and that a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese willfully permitted a materially false tax return to be filed for him on October 15, 1986.

C. Section 7203: Willful Failure to Pay Income Tax When Required by Law

The text of section 7203 is set out in the footnote.^{33/} Section 7203 of the Code makes it a Class A

^{33/} 26 U.S.C. § 7203 provides in relevant part as follows:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or

(Footnote Continued)

misdemeanor willfully to fail to file a return, supply information, or pay a tax at the time or times required by law.^{34/} A failure-to-pay offense under that provision has three elements: (1) the taxpayer must have a duty to pay a tax, (2) he must fail to pay the tax when it is due, and (3) his failure to pay must be willful.^{35/} See, e.g., United States v. Tucker, 686 F.2d 230, 232 (5th Cir.), cert. denied, 459 U.S. 1071 (1982); see also Sansone v. United States, 380 U.S. 343, 351 (1965).

(Footnote Continued)

tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor . . .

^{34/} A Class A misdemeanor is an offense punishable by imprisonment up to one year. 18 U.S.C. § 3581.

^{35/} Failure-to-pay cases are rare. The usual prosecution under section 7203 involves a failure to file. The Tucker case cited in the text was a failure-to-pay prosecution. Other failure-to-pay prosecutions include United States v. Ausmus, 774 F.2d 722 (6th Cir. 1985); United States v. Freed, 688 F.2d 24 (6th Cir. 1982); and United States v. Polermo, 157 F. Supp. 578 (E.D. Pa. 1957), rev'd, 259 F.2d 872 (3d Cir. 1958) (the court of appeals' conclusion that the taxpayer lacked an evil purpose or bad motive was later held in United States v. Bishop, 412 U.S. 346 (1973), and United States v. Pomponio, 429 U.S. 10 (1976), to be an incorrect interpretation of the willfulness requirement). The reported failure-to-pay cases all appear to involve a taxpayer who files a return declaring the tax that is due but who willfully refuses to pay with no intention of paying at a later date. The statute, however, does not require that the unpaid tax be declared on a return, or that the taxpayer have an intention to deprive the government permanently of tax.

On April 15, 1986, Mr. Meese owed \$3,479 in federal income tax on his 1985 securities sales. On October 15, 1986, he had a duty to pay that tax and any interest for late payment.^{36/} He failed to do so. The only remaining question is whether his failure to pay the tax when due was willful within the meaning of section 7203.

A "willful" failure to pay tax means "a voluntary, intentional violation of a known legal duty" to pay tax. United States v. Pomponio, supra, 429 U.S. at 12. For Mr. Meese to have committed an offense under section 7203, he must have known prior to October 15, 1986, that he had some net capital gain on his securities sales, that he would therefore owe a tax on that capital gain, and that the tax was due on October 15, 1986. In addition, knowing these things, Mr. Meese must have voluntarily and intentionally not paid any tax on those securities sales when the return was filed on October 15.

Significantly, in his declaration submitted to the office of independent counsel, Mr. Meese did not state that, prior to October 15, 1986, he believed he had no net capital

^{36/} Civil interest and penalties are calculated from the April 15 deadline regardless of extensions of time for filing the return. For purposes of the criminal provisions, however, a tax is due when the return must be filed, allowing for lawful extensions. See United States v. Drefke, 707 F.2d 978, 981 (8th Cir.), cert. denied, sub nom. Jameson v. United States, 464 U.S. 942 (1983); United States v. Voorhies, 658 F.2d 710, 714 (9th Cir. 1981).

gain on the 1985 securities sales. The evidence shows that, had Mr. Meese given even the slightest attention to the securities he sold (which were included among his other securities listed on the form his accountants provided to him), and to the dates when he acquired and sold the securities in question, he would have concluded that he had a net gain from the sales. As noted above, the overall stock market had appreciated very substantially since the Meeses acquired the securities, most of them by inheritance from his mother-in-law in 1974.^{37/}

At the time of his conversation with Mr. Meese before filing the October 15, 1986 return, Mr. McKean believed that the securities sales had likely resulted in a net gain. In fact, there were \$22,275 in aggregate gains (on 21 securities) and \$1,569 in aggregate losses (on nine securities, including six interest-bearing bonds), yielding a net capital gain of \$20,706, an appreciation of 61 percent over the basis of the securities. If Mr. Meese had assumed that he had no capital gain, without any consideration of the relevant facts, he would not have had the kind of good faith

^{37/} The Dow Jones Industrial Average, for example, had a well-reported climb from the low levels of the mid-1970s following the Arab oil embargo to the then-record high levels of mid-1985. In fact, from November 1974, when the bulk of the securities were valued for purposes of Mrs. Meese's mother's estate, to mid-1985 when the securities were sold, that stock index increased by more than 100 percent.

belief that the law allows as a defense. See United States v. Schiff, 801 F.2d 108, 111-13 (2d Cir. 1986), cert. denied, --- U.S. ---, 107 S.Ct. 1603 (1987); United States v. Reed, 670 F.2d 622, 623-24 (5th Cir.), cert. denied, 457 U.S. 1125 (1982); United States v. Platt, 435 F.2d 789, 792 (2d Cir. 1970) (reliance on accountant not a defense to criminal prosecution if trier of fact finds that "experienced" taxpayer "could not really have believed" his accountant).

As a lawyer and taxpayer who had prior experience declaring and paying tax on capital gains, Mr. Meese was aware, as he has acknowledged, that he would owe income tax on the net capital gains of the securities sales. He further knew that his tax was due on October 15, 1986, with the filing of his return.^{38/}

Finally, Mr. Meese has acknowledged that he knew his tax return would be filed by Mr. McKean on October 15, 1986, without the payment of any tax on the securities sales. That decision not to pay any tax was made or approved by Mr. Meese

^{38/} It would not be credible for Mr. Meese to assert that he had no duty to pay any tax unless he knew the precise amount of the tax due. In the self-assessment tax system employed in this country, it is the duty of the taxpayer to figure his tax and to pay it by the deadline. See United States v. Voorhies, 658 F.2d 710, 713-14 (9th Cir. 1981). Had Mr. Meese made a good faith estimate of the tax due and paid that amount on October 15, 1986, he would have satisfied the minimum requirements of section 7203. Mr. Meese's failure to know the precise amount of his tax liability was a direct result of his failure to obtain the requisite information before his extension of time expired on October 15, 1986. As noted previously, procrastination cannot be asserted as a defense in these circumstances.

knowingly, voluntarily, and intentionally during his telephone conversation with Mr. McKean on or about October 7, 1986.

From the available evidence, the independent counsel has determined that a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese violated section 7203 by willfully failing to pay tax on his 1985 securities sales when the tax was due on October 15, 1986.^{39/}

**D. Reasons for the Independent Counsel's
Determination that Prosecution Is Not Warranted**

Pursuant to the requirement of 28 U.S.C. § 594(f) to "comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws," the independent counsel has sought to approach this matter as it would be approached by the Tax Division of the Department of Justice. The independent counsel has reviewed the published and unpublished guidelines and policies

^{39/} Section 7201 of the Internal Revenue Code, 26 U.S.C. § 7201, makes it a felony to attempt to "evade or defeat" the assessment or payment of any tax. The evidence supports the conclusion that, prior to October 15, 1986, Mr. Meese intended to file an amended return and to pay the tax due when that amended return was filed. Thus, there is no evidence that Mr. Meese intended permanently to "evade or defeat" the assessment or payment of a tax. In these circumstances, section 7201 has seldom been applied. The state of the law on this point is unclear. Compare Edwards v. United States, 375 F.2d 862, 867 (9th Cir. 1967) (section 7201 requires an intent to permanently evade or defeat taxes) with United States v. Whiteside, 404 F. Supp. 261, 264-65 (D. Del. 1975) (questioning the Edwards reasoning in view of the subsequent Supreme Court decision in United States v. Bishop, 412 U.S. 346 (1973)).

of the Tax Division concerning the evaluation of cases for prosecution. In the circumstances of this case, the independent counsel has determined for the reasons set forth below that prosecution is not warranted.^{40/}

Based on the independent counsel's careful review of Mr. Meese's tax returns from 1981 through 1986, Mr. Meese appears in all other respects to have complied with his tax obligations. There certainly is no rule of law, nor should there be, that excuses an isolated violation of the tax laws. However, the absence of a pattern of noncompliance is a factor that weighs heavily in the taxpayer's favor in the determination whether criminal penalties, rather than civil penalties, are the preferred remedy for offenses involving one item, or one closely related group of items, on one year's tax return.

The evidence shows that, at the time he filed his October 15, 1986 tax return, and thereafter, Mr. Meese intended at some future time to file an amended return and to pay the tax due. Thus, he never intended permanently to deprive the government of any relevant information or tax revenues. Again, although this intention by no means

^{40/} While the independent counsel has sought to apply the guidelines and policies of the Tax Division, there is unavoidably a unique aspect to this case. The independent counsel's evaluation of this case cannot duplicate the manner in which the case would have been handled had it arisen in the ordinary course through the administrative and criminal review process within the Internal Revenue Service and the Tax Division of the Department of Justice.

precludes a criminal conviction under the provisions of section 7206(1) or of section 7203, where this factor is clearly shown to exist it weighs in the taxpayer's favor.^{41/}

The evidence also shows that before the independent counsel began his investigation, Mr. Meese had taken some steps to gather the information needed to complete his amended return. Under the policies of the Internal Revenue Service and the Department of Justice, a taxpayer's efforts to bring himself into compliance with his obligations before an investigation of his affairs begins are taken into account in determining whether to bring criminal charges. See United States v. Hebel, 668 F.2d 995, 999 (8th Cir.), cert. denied, 456 U.S. 946 (1982).

Mr. Meese relied on a professional accountant, Mr. McKean, for the preparation of his tax return, disclosed to Mr. McKean the fact that the securities sales had occurred, and followed Mr. McKean's suggestion about how the return would be filed if Mr. Meese failed to provide all the information relevant to the securities sales. A taxpayer

^{41/} The independent counsel understands that, before proceeding with a prosecution under section 7206(1) or section 7203 for a first offense, the Tax Division of the Department of Justice usually looks for some evidence of an intent to deprive the government permanently of tax due, or to conceal tax information from the taxpayer's return preparer or from the government.

cannot shield himself from criminal (or civil) liability by following an accountant's suggestions that the taxpayer knows to be incorrect under the law. It remains the taxpayer's duty to comply with his obligations. Mr. Meese might have been willing to follow a suggestion by Mr. McKean that the return include a good faith estimate of the tax due on the securities sales, coupled with a statement that Mr. Meese intended to file an amended return to provide the missing information. If that suggestion had been made and followed, the elements of Mr. Meese's two probable criminal violations would not exist. Thus, although Mr. Meese's reliance on Mr. McKean did not in these circumstances excuse him from fulfilling his obligations, the independent counsel considers it to be a mitigating factor.

Unlike most other provisions of the federal criminal law, the Internal Revenue Code contains civil penalty and remedy provisions that overlap substantially with its criminal penalty provisions. The existence of an applicable civil penalty is not in itself a reason not to prosecute a probable criminal violation. On the other hand, the possible applicability of a civil penalty provides an alternative to a criminal penalty that may be adequate to assure that the taxpayer involved will comply with his tax obligations in the future. In United States v. Platt, 435 F.2d 789, 794 (2d Cir. 1970), a section 7203 prosecution, Judge Friendly aptly

explained this interrelationship between the criminal and civil penalty provisions of the Internal Revenue Code:

A taxpayer going on a spring holiday who knows he has not filed the return that will become due on April 15 but intends to and does file it in early May, would not be a likely candidate for prosecution under § 7203 even though the elements of the offense exist; the Commissioner [of Internal Revenue] would almost certainly be content with the 5% penalty imposed by § 6651 unless the incident was part of a regular pattern of disobedience.

Mr. Meese's filing of a false return and his failure to pay tax when due, coupled with his delay in correcting these omissions, was more egregious conduct than that of the taxpayer in Judge Friendly's hypothetical case, but was in the same category: Mr. Meese's actions were a one-time failure to comply in full with his tax obligations; they were not part of a pattern of disobedience to the tax laws. Further, there are no other factors that militate in favor of a prosecution.

An argument could be made that a prosecution of the Attorney General for a tax violation would serve important deterrence interests of the government's tax compliance program. The independent counsel has considered this argument and has concluded that it does not outweigh the factors in mitigation. Under all the specific facts and circumstances of this case, the independent counsel has therefore determined that Mr. Meese's conduct with respect to his reporting and payment obligations does not warrant prosecution.

III. REASONS FOR THE INDEPENDENT COUNSEL'S DETERMINATION THAT THERE IS INSUFFICIENT EVIDENCE TO CONCLUDE THAT MR. MEESE COMMITTED ANY CRIMINAL OFFENSE UNDER THE BRIBERY OR GRATUITIES PROVISIONS OF 18 U.S.C. § 201, OR UNDER 18 U.S.C. § 211

A public official's acceptance of a bribe or a gratuity is prohibited by 18 U.S.C. § 201. A public official's acceptance of valuable consideration for his influence in obtaining someone else a federal appointive office is prohibited by 18 U.S.C. § 211. The independent counsel has investigated whether Mr. Meese committed any offense under these provisions. The independent counsel has determined that there is insufficient evidence to conclude that Mr. Meese committed any such offense.

A. There Is Insufficient Evidence To Conclude that Mr. Meese Committed A Bribery or a Gratuity Offense

The prohibition against a public official's acceptance of a bribe is stated in 18 U.S.C. § 201.^{42/} The

^{42/} The bribery provision of 18 U.S.C. § 201 applicable at the relevant time provided in pertinent part as follows:

Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for . . . being influenced in his performance of any official act . . .

. . . .

(Footnote Continued)

prohibition against a public official's acceptance of a gratuity is stated in the same section.^{43/} The offense of accepting a bribe is similar to the offense of accepting a gratuity, as discussed below, except that a gratuity, to constitute a bribe, must be accepted as the quid pro quo for

(Footnote Continued)

Shall be fined not more than \$20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both

Effective December 10, 1986, subsequent to the events relevant here, this bribery provision was re-codified, without substantial change, at 18 U.S.C. § 201(b)(2)(A). Pub. L. 99-646, § 46(a), Nov. 10, 1986, 100 Stat. 3601-04.

^{43/} The gratuities provision of 18 U.S.C. § 201 applicable at the relevant time provided in pertinent part:

Whoever, being a public official . . . , otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him . . .

.

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

Effective December 10, 1986, subsequent to the events relevant here, the gratuities provision was re-codified, without material change in substance, at 18 U.S.C. § 201(c)(1). Pub. L. 99-646, § 46(a), Nov. 10, 1986, 100 Stat. 3601-04.

an official act and the recipient of the bribe must act "corruptly." United States v. Strand, 574 F.2d 993, 995 (9th Cir. 1978); United States v. Brewster, 506 F.2d 62, 82 (D.C. Cir. 1974). Generally, it is not possible to commit the offense of accepting a bribe without also fulfilling all of the elements of a gratuity offense. Because the independent counsel has determined that there is insufficient evidence to conclude that Mr. Meese accepted any gratuity within the meaning of 18 U.S.C. § 201, no further discussion is required to explain the independent counsel's determination that there is insufficient evidence to conclude that Mr. Meese accepted any bribe.

1. Elements of a Gratuity Offense

The gratuities provision is violated when three conditions are met: (1) a public official, (2) directly or indirectly accepts anything of value for himself otherwise than as provided by law, (3) for or because of any official act performed or to be performed by him.

Mr. Meese was at all relevant times a "public official" as that term is defined in section 201.

The phrase, "anything of value," has a broad meaning. It not only includes tangible things of objective economic value, but also includes intangible things that have value to the person who receives them. See, e.g., United States v. Gorman, 807 F.2d 1299, 1304-05 (6th Cir.), cert. denied, --- U.S. ---, 108 S.Ct. 68 (1987); United States v.

Williams, 705 F.2d 603, 622-23 (2th Cir.), cert. denied, 464 U.S. 1007 (1983).

An "official act" covered by the statute "is meant to include any activity that a public official undertakes for the Government." H.R. Rep. No. 87-748, 87th Cong., 1st Sess. 18 (1961). The case law is in accord with this congressional intent. See, e.g., United States v. Dobson, 609 F.2d 840, 842 (5th Cir.), cert. denied, 446 U.S. 955 (1980); United States v. Muntain, 610 F.2d 964, 967-68 (D.C. Cir. 1979); United States v. Carson, 464 F.2d 424, 434 (2d Cir.), cert. denied, 409 U.S. 949 (1972).

A thing of value is accepted "for or because of any official act performed or to be performed" by a public official when the official accepts something of value believing it has been offered to him for or because of past or future official activity benefiting the offerer. If that belief exists on the part of the public official, it is not a defense that the official has confidence that his actions were not undertaken, or would not be undertaken, for the purpose of benefiting the offerer. See, e.g., United States v. Niederberger, 580 F.2d 63, 69 (3rd Cir. 1978), cert. denied, 439 U.S. 980 (1979); United States v. Evans, 572 F.2d 455, 480 (5th Cir.), cert. denied, sub nom. Tate v. United States, 439 U.S. 870 (1978).

A gratuity offense requires that the official have a subjective belief that he is accepting something "for or

because of" his official activity. It is not sufficient merely that there is a circumstantial coincidence between an official's acceptance of something of value and his official acts benefiting the person from whom he has accepted the thing of value. See, e.g., United States v. Previte, 648 F.2d 73, 81-82 (1st Cir. 1981); United States v. Brewster, supra, 506 F.2d at 76; United States v. Irwin, 354 F.2d 192, 197 (2d Cir. 1965), cert. denied, 383 U.S. 967 (1966).

2. Mr. Meese's Official Activities That Benefited Mr. Wallach

During the period investigated by the independent counsel, Mr. Meese performed several official acts that benefited Mr. Wallach. These included acts that assisted Welbilt/Wedtech and acts in furtherance of the Aqaba pipeline project.

a. Mr. Meese's Assistance to Welbilt

Mr. Meese's official acts that benefited Mr. Wallach began with his actions that assisted Welbilt when he was Counselor to the President. In 1981 and 1982, Mr. Meese facilitated Welbilt's efforts to obtain a contract to manufacture small engines for the Army. In 1983, at Mr. Wallach's request, he made a telephone call to Secretary of Commerce Malcolm Baldrige concerning Welbilt's efforts to have the Economic Development Administration, a guarantor and creditor of Welbilt, subordinate its interests to those of a private lender.

There is no substantial evidence that Mr. Meese was motivated to take his actions by any consideration other than his friendship for Mr. Wallach. The evidence does not establish that he was even aware at that time of the nature or extent of Mr. Wallach's prospective financial interest in the success of Welbilt/Wedtech.

**b. Mr. Meese's Assistance to
Mr. Wallach Respecting the
Aqaba Pipeline Matter**

In 1985, Mr. Meese took actions that substantially assisted Mr. Wallach and others in connection with the proposed Aqaba pipeline project. In late May 1985, at Mr. Wallach's urging, Mr. Meese asked the Assistant to the President for National Security Affairs, Robert C. McFarlane, to meet with Mr. Wallach about a crucial aspect of United States participation in a financial guarantee for the Aqaba pipeline project. Mr. McFarlane met with Mr. Wallach about that matter.

On September 25, 1985, Mr. Meese received Mr. Wallach's memoranda respecting the Aqaba pipeline project, accompanied by Prime Minister of Israel Shimon Peres' handwritten letter. Mr. Meese responded to Prime Minister Peres, suggesting that he discuss the pipeline matter with Mr. McFarlane. In mid-October 1985, Mr. Meese discussed the pipeline matter with Prime Minister Peres at the Israeli Embassy. Contemporaneously, Mr. Meese permitted Mr. Wallach to ask Deputy Assistant Attorney General Allan Gerson to prepare a

memorandum supporting the legality of an important aspect of the United States government financial guarantee of the pipeline advocated by Mr. Wallach.

**3. Things of Value Accepted by
Mr. Meese from Mr. Wallach**

As explained in Part Six of this Report, and as summarized below, there are some notable coincidences in the timing of Mr. Meese's acceptance of things of value directly or indirectly from Mr. Wallach and some of the official acts done by Mr. Meese that benefited Mr. Wallach. As discussed below, however, there is nothing inherent in any of the things of value accepted by Mr. Meese from Mr. Wallach, or in the circumstances of Mr. Meese's acceptance of them, that constitutes sufficient evidence to determine that they were accepted as unlawful gratuities.^{44/}

**a. Entertainment Accepted by
By Mr. Meese from Mr. Wallach**

Throughout the period covered by this Report, Mr. Meese and Mr. Wallach socialized on numerous occasions, and Mr. Wallach paid for various social expenses that were

^{44/} Regulations applicable to Mr. Meese as Counselor to the President (3 C.F.R. § 100.735-14) and as Attorney General (28 C.F.R. § 45.735-14) permitted him to accept "gifts, entertainment, and favors," outside of his official compensation "when the circumstances make it clear that the family or personal relationships involved are the motivating factors." This exception is consistent with the prohibition of the gratuities provision. United States v. Standefer, 610 F.2d 1076, 1080 (3d Cir. 1979) (gifts not solely for friendship or social purposes violate the gratuities provision), aff'd, 447 U.S. 10 (1980).

"things of value" accepted by Mr. Meese. In nature and extent, these expenditures were consistent with the friendship between the men. Mr. Meese reciprocated, providing for occasional meals and entertainment for himself and Mr. Wallach.

There were occasional expenditures by Mr. Wallach of significant amounts that benefited Mr. Meese, but each of these was made in circumstances that provide no substantial basis for any inference that they were accepted by Mr. Meese for or because of any official act.^{45/}

b. Mr. Wallach's Facilitation of an \$80,000 Personal Loan for Mr. Meese

In September 1983, Mr. Wallach introduced Mr. Meese to Jeffrey N. Cohen, Chairman of the Board of the National Bank of Commerce in Washington, D.C. The purpose of that introduction was to enable Mr. Meese to obtain immediately an \$80,000 loan from Mr. Cohen's bank. On the same day that he filed a loan application, Mr. Meese received an unsecured personal loan from the bank for \$80,000, with the understanding that it would be converted to a secured loan as soon as the necessary paperwork was completed.

^{45/} For example, during the holiday season at the end of 1982, Mr. Wallach purchased a painting of an eagle for \$1,800 and presented it to Mr. and Mrs. Meese in remembrance of their son, who had died tragically during the summer of 1982. Although this gift indicates the close personal relationship between Mr. Meese and Mr. Wallach, that expression of sympathy raises no implication of any impropriety.

Although Mr. Wallach's efforts to facilitate the loan was a thing of value accepted by Mr. Meese, the loan itself appears to have been made on terms, including a rate of interest, customary for such loans by the bank at that time.

c. Mr. Wallach's Free Legal Services to Mr. Meese During His Confirmation Hearings

In early 1984, Mr. Wallach provided Mr. Meese with free legal representation in connection with the Senate confirmation hearings on his nomination to be Attorney General. When Mr. Meese's confirmation proceedings recommenced in January 1985 -- after the hiatus caused by Independent Counsel Jacob A. Stein's investigation of Mr. Meese -- Mr. Wallach once again provided free legal representation for the duration of the hearings. The independent counsel understands that it is not unusual for lawyers to provide such a free service as a courtesy to a presidential nominee.

d. Mr. Wallach's Paid Legal Representation of Mr. Meese During the 1984 Independent Counsel Investigation

When Independent Counsel Stein was appointed in April 1984 to investigate certain allegations respecting Mr. Meese, Mr. Wallach represented Mr. Meese in that investigation. Mr. Wallach represented Mr. Meese in coordination with the legal representation provided for Mr. Meese by the law firm of Dickstein, Shapiro & Morin.

Mr. Meese agreed in writing to pay Mr. Wallach's legal fees and expenses at Mr. Wallach's usual and customary rates; he agreed to do likewise regarding the law firm's legal fees and expenses. This undertaking was conditioned on the possibility that a court-awarded reimbursement under the Ethics in Government Act, 28 U.S.C. § 593(g), might satisfy Mr. Wallach's and the law firm's claims for fees and expenses. The fee agreements contained the proviso that Mr. Meese would be liable for fees and expenses only if the court "were substantially to deny" the application for reimbursement.

Mr. Wallach's (and the law firm's) application for court-ordered reimbursement was filed in December 1984. Mr. Wallach claimed \$142,562.50 for his fees and expenses. In its January 1985 response to the fee application, the Department of Justice objected in certain respects to the nature and amount of the claimed reimbursement by Mr. Wallach and by the law firm. In March 1985, the court ordered that additional information be submitted to justify the fee application. On June 7, 1985, the court awarded Mr. Wallach reimbursement of 54 percent of the amount he sought. It awarded the law firm 68 percent of the amount it sought. Mr. Wallach immediately announced that he was not going to request that Mr. Meese pay the balance of his fees and expenses. In effect, Mr. Wallach accepted 54 percent of his claim as not being a substantial denial of the application for reimbursement. The law firm likewise accepted reimbursement

of 68 percent of its claim in full satisfaction of Mr. Meese's obligation to it for fees and expenses.

Mr. Wallach's legal representation of Mr. Meese was a thing of value. In addition, Mr. Wallach's acceptance of the partial court-awarded reimbursement, which eliminated Mr. Meese's potential liability to him, may be considered a thing of value accepted by Mr. Meese.

Mr. Meese had a substantial potential liability to Mr. Wallach at least during the period between January 1985, when the Department of Justice objected to aspects of the application for reimbursement, and June 7, 1985, when Mr. Meese learned that this financial liability would be satisfied by the court's reimbursement order. Mr. Meese acknowledged this liability in his May 24, 1985 recusal policy and referred to this potential liability as the principal reason for not considering Mr. Wallach for a Department of Justice job during this period. There is no evidence that Mr. Wallach's acceptance of the court-awarded fee was an action that would not have been taken by a lawyer having arm's length dealings with Mr. Meese.

e. Mr. Wallach's Introduction
Of Mr. Meese to Mr. Chinn

During April and May, 1985, Mr. Wallach also had arranged for Mr. Meese to engage W. Franklyn Chinn as his money manager. Mr. Meese was told by Mr. Wallach that Mr. Chinn would be able to provide the Meeses with a 20

percent rate of return on their investments. Mr. Meese understood that Mr. Chinn accepted the Meeses as clients as a favor to Mr. Wallach. There is no evidence, however, that Mr. Meese believed that Mr. Chinn accepted the Meeses as clients because of any past or anticipated official act by Mr. Meese that would benefit Mr. Chinn or Mr. Wallach.

Mr. Chinn did provide the Meeses with a very favorable rate of return on their investments throughout the entire period of his management of their assets, from the spring of 1985 through the spring of 1987. That would not have occurred had Mr. Wallach not arranged that relationship. The opportunity to have Mr. Chinn as a money manager may therefore have been perceived by Mr. Meese as a thing of value received from Mr. Wallach.^{46/}

f. Mr. Wallach's Efforts to Arrange
Employment for Mrs. Meese

The evidence shows that as early as June 1985, Mr. Meese learned that Mr. Wallach was trying to arrange a job for Mrs. Meese funded by Mr. and Mrs. Howard Bender. There was substantial activity concerning this matter in October 1985. On November 15, 1985, the Benders' charitable foundation committed \$40,000 to pay the annual salary for a

^{46/} Of course, Mr. Chinn was not the only able money manager who enjoyed great success in handling investment portfolios for clients during this period of rising stock values. The Meeses could have employed the services of another money manager who might have been just as successful as Mr. Chinn.

position at the National Multiple Sclerosis Society that was to be taken by Mrs. Meese. Mr. Meese knew of the role played by Messrs. Wallach and Bender in creating and funding the job opportunity. Mrs. Meese's salary was deposited in Mr. and Mrs. Meese's joint bank account, as Mr. Meese had every reason to expect would happen if Mrs. Meese accepted the job. A second year of employment at the same salary for Mrs. Meese also was funded by the Bender Foundation. Mr. Wallach's facilitation of this job opportunity was a thing of value accepted by Mr. Meese.

There is no evidence that Mr. Meese did anything to benefit Mr. or Mrs. Bender. Nor is there evidence that Mr. Meese believed that the generosity of the Bender Foundation was motivated by any anticipated official act by Mr. Meese to benefit either Mr. Wallach or the Bender real estate interests.^{47/}

**g. Mr. Wallach's Facilitation
Of Mr. Meese's Refinancing
Of His Home Mortgage**

In February 1986, Mr. Wallach facilitated Mr. Meese's refinancing of his McLean, Virginia, home through the National Bank of Washington. That \$260,000 mortgage loan appears to have been made at terms that were customary for the bank at that time for a loan of that size.

^{47/} Cf. 26 U.S.C. §§ 4941(d)(1), 4946(a)(1)(I) and (c) (imposing sanctions on transactions by private foundations directly or indirectly benefiting government officials); Treas. Reg. §§ 53.4941(d)-1(b)(2), 53.4945-4(a)(4)(iv).

* * *

Circumstantial inferences may be drawn from the coincidence, especially during the spring, summer, and fall of 1985, between Mr. Meese's acceptance of things of value from Mr. Wallach and Mr. Meese's official acts that benefited Mr. Wallach. During that 1985 time period, while Mr. Meese had a substantial potential liability to Mr. Wallach for legal fees, after Mr. Wallach had arranged what was proving to be a profitable relationship between Mr. Meese and Mr. Chinn, and while Mr. Wallach was arranging for Mrs. Meese to secure a job paying \$40,000 per year, Mr. Meese undertook unusual official activities to aid Mr. Wallach's efforts to further the Aqaba pipeline project.

The circumstances provide some evidence to support a conclusion that Mr. Meese accepted things of value from Mr. Wallach when he should have been sensitive to the possibility that a part of Mr. Wallach's motivation may have been to show appreciation for Mr. Meese's official activities that benefited Mr. Wallach. If Mr. Meese believed that Mr. Wallach was motivated in part by such a consideration, a gratuities violation would have occurred. There is no direct evidence that Mr. Meese accepted anything of value from Mr. Wallach with the requisite state of mind for a gratuities violation. The independent counsel has determined that the available evidence is insufficient to conclude that such a violation probably occurred.

B. There Is No Substantial Evidence that Mr. Meese Received Valuable Consideration for Assisting Mr. Wallach to Obtain a Federal Appointive Position

It is unlawful under 18 U.S.C. § 211 for a person to receive anything of value in consideration for the use of his influence to obtain a federal appointive position for someone else.^{48/} See United States v. Fayette, 388 F.2d 728 (2d Cir. 1968).

In the spring of 1982, when he was Counselor to the President, Mr. Meese recommended and supported Mr. Wallach for appointment to the United States Advisory Commission on Public Diplomacy. Mr. Wallach received that appointment in December 1982. After his term on this Advisory Commission expired in July 1985, Mr. Wallach was reappointed for a second term.

When Mr. Meese was Attorney General, he also assisted Mr. Wallach between the fall of 1985 and early 1987 in Mr. Wallach's efforts to be appointed United States Representative to the Human Rights Commission of the Economic

^{48/} Section 211 provides in relevant part:

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

and Social Council of the United Nations (Human Rights Commission). Mr. Wallach served as the alternate delegate to the Human Rights Commission meeting in Geneva, Switzerland, during February and March, 1986. Mr. Wallach was appointed as the United States Representative to the Human Rights Commission in October 1986. He represented the United States in that capacity at the Human Rights Commission meeting in Geneva in February and March, 1987.

Mr. Meese also assisted Mr. Wallach in his efforts to gain the personal rank of Ambassador. He was nominated for that position by Secretary of State George P. Shultz in November 1986, but that nomination was never confirmed. Mr. Wallach resigned from his position as United States Representative to the Human Rights Commission in July 1987.

Mr. Meese used his "influence in obtaining for any person any appointive office or place under the United States," within the meaning of section 211. There is no substantial evidence, however, that any of the various things of value given to Mr. Meese by Mr. Wallach, singly or in combination, were received by Mr. Meese "for personal emolument . . . in consideration of" the use of his influence in this respect. Thus, there is no substantial basis to conclude that Mr. Meese committed an offense under section 211.

**IV. REASONS FOR THE INDEPENDENT COUNSEL'S DETERMINATION
THAT THE AVAILABLE EVIDENCE IS INSUFFICIENT TO
CONCLUDE THAT MR. MEESE COMMITTED AN OFFENSE
UNDER THE FOREIGN CORRUPT PRACTICES ACT**

Part Seven of this Report describes the full context of Mr. Meese's significant actions to aid the Aqaba pipeline project. In May 1985, at the urging of Mr. Wallach, Mr. Meese asked the Assistant to the President for National Security Affairs, Robert C. McFarlane, to meet with Mr. Wallach about United States support for and participation in an effort underway by Mr. Wallach's client, Bruce Rappaport, to assemble an insurance package for the security of the pipeline from interruption by Israeli hostile action. United States government support in this matter was viewed by Mr. Rappaport as critical to the success of the proposed commercial undertaking.

Mr. McFarlane agreed to such a meeting, and met with Mr. Wallach and Mr. Rappaport. This extraordinary request of the Attorney General to the National Security Advisor marked the beginning of active United States government involvement with Messrs. Wallach and Rappaport in supporting that foreign commercial venture.

Three months later, the United States agencies that had arranged for an insurance package were encountering a seemingly insurmountable road block in assembling a so-called salvage package, which would indemnify those agencies if they incurred liability. Upon receiving memoranda from Mr. Wallach and a personal letter from Prime Minister of Israel Shimon

Peres in September 1985, Mr. Meese again contacted Mr. McFarlane about the Aqaba pipeline project. This second intervention by Mr. Meese resulted in renewed and vigorous actions by United States government officials to assist Messrs. Wallach and Rappaport in their foreign commercial venture. These actions were taken despite Iraq's apparent loss of interest in the Aqaba pipeline. Iraq had completed a different pipeline and had signed agreements for the construction of yet another.

Mr. Meese made this second contact with Mr. McFarlane after first being informed orally and in writing by Mr. Wallach of a plan whereby a covert payment of some kind from profits generated by the Aqaba pipeline project had been authorized, offered, or promised to the Israeli Labor Party. Mr. Meese did not inform Mr. McFarlane of this secret plan.

Shortly thereafter, Mr. Meese authorized what was in essence the private use by Mr. Wallach of the Department of Justice Office of Legal Counsel to aid the pipeline project. He permitted Mr. Wallach to ask Deputy Assistant Attorney General Allan Gerson to prepare a memorandum supporting the legality of an important aspect of the United States government financial guarantee proposed by Mr. Wallach. Mr. Meese understood at the time that such a legal conclusion was necessary for the success of Mr. Wallach's proposed financial guarantee.

In view of the startling statement in Mr. Wallach's September 25 memoranda to Mr. Meese -- "What was also indicated to me, and which would be denied everywhere, is that a portion of those funds will go directly to Labor" -- the independent counsel has investigated fully whether Mr. Meese's actions constituted an offense under the Foreign Corrupt Practices Act of 1977 (FCPA).^{49/} After thorough investigation of the facts and consideration of the applicable law, the independent counsel has determined that the available evidence does not meet the requisite standard of proof for him to determine that a violation of the criminal law probably occurred. The available evidence is insufficient for the independent counsel to determine that a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese violated the FCPA.

A. Prohibited Conduct Under the FCPA

In general overview, the FCPA prohibits a United States business entity or its agents from bribing foreign officials to make discretionary decisions that will promote the business interests of the United States business entity.^{50/}

^{49/} Pub. L. No. 95-213, §§ 101-104, 91 Stat. 1494.

^{50/} The relevant portion of the FCPA, 15 U.S.C. § 78dd-2, provides as follows:

(Footnote Continued)

The elements of the offense are: (1) a "domestic concern,"

(Footnote Continued)

(a) It shall be unlawful for any domestic concern, . . . or any officer, director, employee, or agent of such domestic concern . . . to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to --

. . . .

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of --

(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official function; or

(B) inducing such party, official, or candidate to use it or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

. . . .

(b)(1)

(B) Any individual who is a domestic concern and who willfully violates subsection (a) of this section shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

. . . .

(3) Whenever a domestic concern is found to
(Footnote Continued)

including an individual, who (2) "willfully," (3) uses some means or instrumentality of interstate or foreign commerce

(Footnote Continued)

have violated subsection (a) of this section, any employee or agent of such domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than five years, or both.

. . . .

(d) As used in this section:

(1) The term "domestic concern" means (A) any individual who is a citizen, national, or resident of the United States; or (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.

(3) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof. Such term includes the intrastate use of (A) a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(4) "in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person" (5) and whose use of the instrumentality of commerce is "corruptly in furtherance of" (6) "an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value" to (7) "any foreign political party or official thereof" (8) when such payment is for the purpose of "inducing such party, official, or candidate to use its or his influence with a foreign government."

In broad conception, the FCPA defines an offense from the "briber's" perspective, whether or not the payment authorized, offered, or promised to a foreign official would be illegal under the law of the relevant foreign jurisdiction. The FCPA prohibits a person subject to the jurisdiction of the United States -- i.e., a "domestic concern" -- from acting "corruptly" in furtherance of an authorization, offer, or promise to a foreign official that would constitute a bribe if the foreign official were instead a United States government official.^{51/}

^{51/} There is no express provision in the FCPA that excludes a payment corruptly made to a "foreign official" merely because the payment is not illegal in the foreign country. Thus, the legality of a "bribe" in a foreign country does not absolutely preclude an FCPA violation. Rather, the legality of the foreign payment undercuts the proof that the person offering the payment acted with the requisite "corrupt" intent. If the
(Footnote Continued)

This conception of the statute is evident from its text and is confirmed by the legislative history. In describing the "corrupt" state of mind that is required for an FCPA violation, Congress stated: "The word 'corruptly' connotes an evil motive or purpose such as that required under 18 U.S.C. § 201(b) which prohibits domestic bribery." H.R. Rep. No. 95-640, 95th Cong., 1st Sess. 8 (1977); S. Rep. No. 95-114, 95th Cong., 1st Sess. 10 (1977). The handful of cases actually prosecuted under the FCPA, as well as those considered for prosecution by the Department of Justice, all have involved prosecution of a "briber" who is a "domestic concern" or who is an agent of a domestic concern under the statute.^{52/}

(Footnote Continued)

person or entity making a payment to a foreign official believes that the payment is lawful in the foreign country, then that person or entity would not have the corrupt intent required for an FCPA violation.

The Congressional intention that the FCPA should not prohibit so-called grease payments or facilitating payments -- which are intended to encourage lower-level foreign officials to perform their non-discretionary functions -- is embodied in the limiting definition of "foreign official" contained in 15 U.S.C. § 78dd-2(d)(2).

52/ See United States v. Crawford Enterprises, Inc., 826 F.2d 392 (5th Cir. 1987); United States v. McLean, 738 F.2d 655 (5th Cir. 1984); see also Environmental Techtonics v. W. S. Kirkpatrick Inc., 1988-1 Trade Cas. (CCH) ¶ 67,994 (3d Cir. 1988) (civil RICO suit following guilty pleas to FCPA violations); The Enforcement of the Foreign Corrupt Practices Act by the Reagan Administration, American Bar Association, Section of International Law and Practice and Section of Corporation, Banking and Business Law, R. S. Shine, Chairman (August 2, 1983).

Although the central purpose of the statute is to prohibit foreign bribery by United States citizens and businesses, the statute by its terms reaches more broadly to encompass the activities of persons who have no direct involvement with the actual authorization, offer, or payment of a foreign bribe. This broader reach exists because the term "domestic concern" is defined to include "any individual who is a citizen, national, or resident of the United States" and because the statutory prohibition of activities "in furtherance of" a foreign bribe covers activities that are not directly connected with making or carrying out an offer or payment of a bribe. Moreover, the provisions of 18 U.S.C. § 2 make aiding and abetting an FCPA violation itself a violation of the FCPA.^{53/}

Thus, Mr. Meese potentially acted as an aider and abetter of Mr. Wallach, who was a "domestic concern" under the statute by virtue of his United States citizenship.^{54/} 18 U.S.C. § 78dd-2(d)(1). The telephone calls made by

^{53/} Aiding and abetting under 18 U.S.C. § 2 requires that the substantive offense occurred, that the aider and abetter did some act in furtherance of the offense, and that the aider and abetter had the same state of mind (mens rea) that is required to commit the substantive offense. See e.g., United States v. Ruffin, 613 F.2d 408, 412-16 (2d Cir. 1979).

^{54/} The independent counsel's legal analysis of Mr. Meese's conduct would not be materially altered if Mr. Meese himself were considered to be the "domestic concern" under the statute.

Mr. Wallach and Mr. Meese -- even those within the District of Columbia -- respecting the Agaba pipeline matter used an instrumentality of interstate commerce. 18 U.S.C. § 78dd-2(d)(3). Such telephone calls were made "in order to assist the domestic concern [Mr. Wallach] in obtaining or retaining business for or with, or directing business to, any person [Mr. Rappaport]," within the meaning of the statute.

Even applying a broad interpretation of the potential coverage of the FCPA, however, Mr. Meese would have violated the statute only if he acted "corruptly in furtherance of" an authorization, offer, or promise of a bribe to the Israeli Labor Party.

**B. Whether Mr. Meese Acted Corruptly
In Furtherance of a Bribe**

An essential element of an FCPA offense is that the defendant acted "corruptly in furtherance of" an authorization, offer or payment of a bribe. As stated, this requires "an evil motive or purpose such as that required under 18 U.S.C. § 201(b) which prohibits domestic bribery." The case law interpreting the term "corruptly" under the domestic bribery statute has therefore identified the state of mind required to act "corruptly" under the FCPA.

United States v. Strand, 574 F.2d 993 (9th Cir. 1978), approved the following definition of the term "corruptly" under the domestic bribery statute, id. at 996 (certain quotation marks omitted):

An act is corruptly done, if done voluntarily and intentionally, and with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means.

The motive to act corruptly is ordinarily a hope or expectation of either financial gain or other benefit to one's self, or some aid or profit or benefit to another.

[To act corruptly] requires proof of specific intent, which is defined as proof that the defendant knowingly did an act which the law forbids, purposely intending to violate the law.

If Mr. Meese understood from reading the September 25, 1985 memoranda or from his conversations with Mr. Wallach or others that there was an authorization, offer, or promise to pay a bribe to the Israeli Labor Party as the quid pro quo for Israel's guarantee of noninterference with the Aqaba pipeline, then Mr. Meese acted "corruptly" within the meaning of the FCPA when he assisted Mr. Wallach in the pipeline matter.

**C. Insufficient Evidence of an Authorization,
Offer, or Promise to Make a Payment to the
Israeli Labor Party as a Quid Pro Quo for
An Official Act by the Israeli Government
Or by an Israeli Official**

An essential element of an FCPA offense is an authorization, offer, or promise to make a corrupt payment to

a foreign official or political party.^{55/} This element requires both (1) an authorization, offer, or promise to make a payment, and (2) a "corrupt" intention by the offerer that the payment is to be the unlawful quid pro quo for an official act.

Mr. Wallach's memoranda of September 25, 1985, by themselves, do not constitute admissible evidence in a court of law. Apart from those memoranda, the independent counsel has discovered no credible admissible evidence that either component of a foreign bribe existed. No credible admissible evidence has come to light that a payment was actually authorized, offered, or promised to the Israeli Labor Party in connection with the Aqaba pipeline project, and no credible admissible evidence has come to light that such a payment was corruptly intended as the quid pro quo for an official act.

On the basis of the statement that a covert payment had been or would be authorized, offered, or promised, the inference might reasonably be drawn from Mr. Wallach's

^{55/} Absent a provision in a substantive offense that encompasses an "attempt" to commit the offense, there is no general federal crime of attempt. See United States v. Everett, 700 F.2d 900, 903-04 (3d Cir. 1983). The FCPA, by its terms, criminalizes acts in furtherance of an authorization, an offer or a promise of a corrupt payment. In this respect, it encompasses acts in furtherance of an attempted bribe even if the bribe does not occur. But the FCPA does not more broadly encompass an "attempt" to commit acts in furtherance of a corrupt payment. Thus if there is not even an authorization, offer, or promise of a corrupt payment, it is impossible to commit an FCPA offense no matter what the person who undertakes "acts in furtherance" believes.

memoranda to Mr. Meese that the offerer corruptly intended the payment as the quid pro quo for an official act by a foreign official. One of Mr. Wallach's memoranda of September 25, 1985, included the following statements: "He [Mr. Rappaport] confirmed the arrangement with [Prime Minister of Israel] Peres to the effect that Israel will receive somewhere between \$65-\$70 million a year for ten years out of the conclusion of the [pipeline] project. What was also indicated to me, and which would be denied everywhere, is that a portion of those funds will go directly to Labor." The second September 25, 1985 memorandum from Mr. Wallach to Mr. Meese included the following statement: "In addition, we all recognize that there would be no progress to this point had he [Mr. Rappaport] not been able to obtain the security package which, involves the never-to-be-stated but fully understood quid pro quo which helped to produce that commitment by the friendly country [Israel]."

It would not be a "bribe" within the meaning of the FCPA for the State of Israel to receive revenues from the Aqaba pipeline as the explicit quid pro quo for Israel's written assurance of its publicly stated policy of noninterference. Thus, the statement in Mr. Wallach's memorandum that the Government of Israel would receive \$65-70 million if the pipeline project was successful signifies nothing criminal and it would not be a violation of the FCPA to further such a transaction.

By contrast, the offer or the intention to offer a payment to an official or political party within Israel with the corrupt intention that the payment would be the quid pro quo for such a governmental assurance of noninterference would come within the scope of the FCPA. Thus, the independent counsel's investigation has focused on this statement in Mr. Wallach's memorandum: "What was also indicated to me, and which would be denied everywhere, is that a portion of those funds will go directly to Labor."

An objective interpretation of that sentence fairly leaves the impression that a bribe was at least authorized, if not offered or promised, to the Israeli Labor Party as part of the payment that was intended for the Israeli government as the quid pro quo for its pipeline security agreement.

The written statements at issue, taken at face value, reflected Mr. Wallach's recounting of a communication from Bruce Rappaport. Mr. Rappaport was a personal friend of Prime Minister Peres, the head of the Israeli Labor Party. The rules of evidence characterizes the critical statements in Mr. Wallach's memoranda as hearsay, and those rules refuse to give credence to such hearsay statements unless there is some basis for bolstering their trustworthiness.

The independent counsel has not obtained the sworn testimony of Mr. Wallach or of any of the persons who would have direct knowledge of any authorization, offer, or promise of a payment to the Israeli Labor Party. Although the

independent counsel's access to the most knowledgeable individuals has been precluded, no witness or document available to the independent counsel has provided any confirmation that a corrupt payment to the Israeli Labor Party was authorized, offered, or promised.

* * *

In view of all of the foregoing circumstances, the independent counsel has determined that the available admissible evidence is insufficient for a trier of fact to conclude beyond a reasonable doubt that Mr. Meese's actions in connection with the Aqaba pipeline project violated the Foreign Corrupt Practices Act.

PART ONE

**THE INVOLVEMENT OF EDWIN MEESE III WITH GOVERNMENT
MATTERS OF CONCERN TO THE WELBILT/WEDTECH CORPORATION**

On May 11, 1987, the independent counsel accepted referral of the question whether any of the federal conflict of interest laws or any other provision of federal criminal law was violated by Attorney General Edwin Meese III in his relationship or dealings at any time from 1981 to the present with, among others, the Welbilt Electronic Die Corporation (Welbilt/Wedtech).

This section of the Report discusses actions taken by Mr. Meese that assisted Welbilt during the period from January 1981 through July 1983, and reviews the results of the independent counsel's investigation of allegations of further actions taken by Mr. Meese during the period from July 1983, to the present.

The allegations of wrongdoing by Mr. Meese can be divided into three episodes, or series of episodes, in which he was alleged to have taken actions helpful to Welbilt/Wedtech at the instance of his friend, E. Robert Wallach, an adviser and later a shareholder of the company.

FIRST: In 1981 and 1982, Welbilt was seeking to obtain a contract to manufacture small engines for the Army. Mr. Meese, then Counselor to the President, and his staff intervened with officials of the Small Business Administration (SBA) and the Army to facilitate Welbilt's obtaining this

contract. The independent counsel has concluded that, but for this intervention, Welbilt probably would not have been awarded the contract. The independent counsel has found no evidence, however, that Mr. Meese received any financial benefit from his actions.

SECOND: In 1983, Welbilt, then in a difficult financial position, was seeking to obtain major financing from Bank Leumi, an Israeli bank with offices in New York. One of the bank's conditions for providing the loan was that the Economic Development Administration of the Department of Commerce (EDA), a guarantor and substantial creditor of Welbilt, agree to subordinate its interests to the interests of Bank Leumi. At Mr. Wallach's urging, Mr. Meese telephoned Secretary of Commerce Malcolm Baldrige, allegedly to attempt to facilitate Welbilt's obtaining EDA's agreement to this provision.

The EDA was subjected to substantial political pressure, including direct and indirect contacts by Messrs. Nofziger, Bragg and members of Congress. Due to Secretary Baldrige's death and Mr. Meese's inability to recall his precise role or influence in the EDA's decision to subordinate its interests cannot be determined. However, the evidence indicates that EDA ultimately approved the subordination agreement on the merits.

THIRD: Former officers of Wedtech alleged that Mr. Wallach represented to them that Mr. Meese intervened on

Wedtech's behalf on a number of occasions during the period from the fall of 1983 through 1986. The independent counsel has discovered no competent evidence of any actions relating to Welbilt/Wedtech taken by Mr. Meese after July of 1983.

After thoroughly investigating all of these matters, the independent counsel has determined, based on the currently available evidence, that there is no substantial evidence that Mr. Meese's involvement with matters concerning Welbilt/Wedtech violated any criminal law.^{56/}

I. BACKGROUND INFORMATION ABOUT MR. MEESE AND HIS RELATIONSHIP WITH E. ROBERT WALLACH

Mr. Meese received his law degree from the University of California at Berkeley in 1958. Following graduation from law school, Mr. Meese served for nine years as a Deputy District Attorney in the Alameda County District Attorney's office. He and his wife, Ursula, had two sons and a daughter.

Mr. Meese's professional relationship with Ronald W. Reagan began in January 1967, when Mr. Meese was appointed as Legal Affairs Secretary to Governor Reagan. Mr. Meese became

^{56/} The independent counsel considered whether Mr. Meese committed an offense of aiding and abetting under 18 U.S.C. § 2 in connection with the violations of 18 U.S.C. § 207(c) for which Mr. Nofziger was convicted. In reliance upon the reasoning of United States v. Nasser, 476 F.2d 1111 (7th Cir. 1973), the independent counsel concluded that, in general, Congress did not intend that section 2 be applied to the government contactee of lobbying activities made unlawful under section 207.

Governor Reagan's Executive Assistant and Chief of Staff in February 1969, and held that position through January 1975.

From January 1975, through April 1976, Mr. Meese was a Vice President of Rohr Industries, an aerospace and transportation company with headquarters in California. He then engaged in the private practice of law from 1976 through January 1981, also holding a part-time position teaching law courses at the University of San Diego Law School from 1977 through January 1981.

Mr. Meese worked part time in 1979 for Mr. Reagan's presidential election campaign. In 1980, he worked substantially full time as Chief of Staff of the campaign. In August 1980, before the general election, Mr. Meese moved to Washington, D.C. where the national Reagan campaign headquarters was located. Following the November election, Mr. Meese worked on the transition team. President Reagan appointed him Counselor to the President on January 21, 1981, the day after the inauguration. Mr. Meese served in this capacity until he was confirmed as Attorney General on February 22, 1985.

Mr. Meese first met Mr. Wallach at law school, where they were classmates. Since their law school years, Mr. Meese and Mr. Wallach have developed and maintained a close personal relationship. Mr. Wallach became a successful personal injury lawyer in San Francisco.

Starting about the time Mr. Meese began his service in the Reagan Administration, Mr. Wallach began to shift his attention away from his personal injury practice, and became increasingly involved as a consultant to Welbilt in its dealings with the federal government. While Mr. Meese was Counselor to the President, and when Mr. Meese became Attorney General, Mr. Wallach frequently wrote, spoke with, and visited Mr. Meese. According to Mr. Meese's Deputy at the White House, Mr. Wallach enjoyed unparalleled access to Mr. Meese and often Mr. Meese's schedule was rearranged to accommodate Mr. Wallach's unscheduled visits.

Mr. Wallach considered himself to be an influential personal adviser to Mr. Meese, and Mr. Meese willingly received Mr. Wallach's advice on a wide variety of matters - from foreign policy to personal dietary recommendations. Mr. Wallach's advice to Mr. Meese came in the form of numerous memoranda and correspondence as well as frequent conversations when they met, dined and traveled together.^{57/}

The evidence shows that Mr. Wallach sought at times to exploit his relationship with Mr. Meese to further the commercial interests of two of his clients. His efforts on behalf of these two clients are outlined in this Report.

^{57/} Mr. Wallach's steady stream of letters began as early as Mr. Meese's first day in office, January 21, 1981, with advice on candidates for political appointments.

**II. MR. MEESE'S INVOLVEMENT IN THE EFFORTS OF
WELBILT ELECTRONIC DIE CORPORATION TO
OBTAIN A CONTRACT TO MANUFACTURE SMALL
ENGINES FOR THE ARMY**

One of the commercial enterprises for which Mr. Wallach served as a consultant and lobbyist was the Welbilt Electronic Die Corporation. The relationship between Welbilt (renamed Wedtech Corporation in 1983) and Mr. Wallach began in early 1981, and continued until revelations in late 1986 of widespread criminal activity by certain of Wedtech's officers and directors. This section of the Report concerns Mr. Meese's involvement in the efforts of Welbilt to obtain a contract to manufacture small gasoline engines for the United States Department of the Army.

**A. Welbilt's Participation in the Small
Business Administration's 8(a) Pilot Program**

In 1981, Welbilt was a privately owned tool and die company located in the South Bronx of New York City. Welbilt's President, John Mariotta, who is of Puerto Rican descent, was a vigorous advocate of the potential of minority-owned enterprises to play a key role in the revitalization of economically disadvantaged areas such as the South Bronx.

Because of its minority-ownership status, Welbilt qualified to participate in the SBA's "8(a) Program," under which minority-owned companies are given priority consideration in the award of selected government contracts. Prior to

1980, Welbilt had obtained several contracts under the 8(a) Program. Through these contracts Welbilt had grown between 1980 and 1981 from annual sales of \$1.5 million to \$12 million and from 60 employees to some 250 employees.

A special aspect of the 8(a) Program was the "pilot program," which authorized the SBA to designate particular procurements of the Department of the Army as 8(a) contracts exempt from competitive bidding, and to identify a particular minority firm with which those contracts would be negotiated. As a legal matter, under the pilot program, the prime contract would be entered into between the Army and the SBA, with the SBA then subcontracting to the minority firm. As a practical matter, however, the Army would negotiate substantial aspects of the contract directly with the minority firm.

The SBA had authority to provide several forms of technical, managerial and financial assistance to the designated minority firm, including outright grants called business development expense assistance (BDE) and interest-free loans called advance payments. If negotiations between the Army and the minority firm reached an impasse, leaving a gap between the price the Army was willing to pay and the proposal of the minority firm, the SBA could in its discretion bridge the gap by making a BDE grant.

The Army had no obligation under the pilot program to subsidize the designated minority firm. Its obligation was to negotiate contract terms in good faith. As in the case of

other negotiated contracts, the Army's practice in the pilot program was to negotiate from a calculated fair market price, which was the Army's best estimate of the price that might be obtained through competitive bidding.

If the Army and the minority firm reached an impasse in price negotiations, and if the SBA was unwilling or unable to bridge the gap with BDE grants or other financial assistance, the statute permitted the Army to withdraw the contract from the pilot program. However, this required a decision by the Secretary of the Army, and for political reasons was an action of last resort.

**B. Early Stages of Welbilt's Efforts
To Obtain the Army Engine Contract**

In 1979, Welbilt became interested in a proposed Army procurement for small standard military engines of the type used for powering electrical generators in the field and for various other purposes. Welbilt was actively supported in its interest by the New York Regional Office of the SBA.

In April of 1980, the procurement was designated by the SBA as a pilot program contract. In August of 1980, Welbilt was designated by the SBA as the 8(a) pilot program contractor to negotiate with the government for the procurement.

Early in 1981, Welbilt submitted a proposed price of \$99 million for the manufacture of 13,100 small engines for the Army. By early April of that year, it had reduced its

proposal to \$38.9 million. At that time, the Army's calculated fair market price on which it based its negotiating position was approximately \$19.5 million. The Army had determined that further negotiations could not reasonably be expected to narrow the gap sufficiently to permit going forward with a non-competitive contract. In a letter dated April 10, 1981, from Juanita P. Watts, Director of the Army Office of Small and Disadvantaged Business Utilization, to M. Michael Cardenas, the SBA Administrator, the Army formally requested the SBA to consent to a withdrawal of the contract from the pilot program so that the Army could proceed with a competitive procurement.

The New York Regional Office of the SBA opposed removing the engine contract from the pilot program, and sought to persuade the Army to conduct an audit of Welbilt's proposal.

C. The Audit Issue

Starting in late March or early April of 1981, and continuing throughout the year, there was substantial discussion and controversy among the parties as to whether the Army should conduct an "audit" and a related "technical review" of the company's capacity to produce the engines. The course of that discussion and controversy reflected fundamental disagreements between Welbilt's supporters and the Army about the purpose of an audit and technical review.

From the Army's point of view, the most favorable outcome for Welbilt that could be expected from an audit would be verification that the company was capable of producing a satisfactory engine for its proposal of approximately \$39 million. This, by itself, would not affect the Army's position that Welbilt's proposal was too high.

From Welbilt's perspective, an audit would demonstrate that its \$39 million proposal was honest and reasonable, based on its cost projections. A technical review would verify that Welbilt was capable of building the engine at the proposed price. Welbilt's position was that it should be awarded the contract at a price that represented its actual costs plus a reasonable profit. According to Welbilt, the Army's fair market price was unreasonably low because it was based on out-of-date calculations. Welbilt also believed that the Army's refusal to conduct an audit and technical review reflected a bias by decision-makers in the Army against contracting with a minority-owned firm.

**D. April 1981 -- Mr. Wallach's First Contacts
With Mr. Meese Concerning Welbilt's Efforts
To Obtain the Army Engine Contract**

Mr. Wallach's first contact with Welbilt was in the spring of 1981 at about the time Welbilt submitted its \$38.9 million proposal. He became interested in assisting the company in its efforts to obtain the Army engine contract. Initially, Mr. Wallach charged no fee for his services,

although his out-of-pocket expenses were reimbursed by the company.

Mr. Wallach was recommended to the Welbilt officers by a California private investigator, Harold K. Lipset. Welbilt had asked Mr. Lipset to investigate an Army employee who, the company had learned, was strongly opposed to the Welbilt small engine proposal. Welbilt hoped to discredit the Army employee and undermine his opposition to them. Mr. Lipset suggested to Welbilt officials that, rather than have him proceed with his investigation, they hire the services of a certain California attorney who had a strong contact within the new Administration -- Mr. Wallach, a close personal friend of the new Counselor to the President, Mr. Meese.

On or about Friday, April 24, 1981, Mr. Wallach flew to New York City and met for the first time with Mr. Mariotta, president of Welbilt, and Mario Moreno, the treasurer. As a result of this meeting, Mr. Wallach agreed to assist the company by using his influence to argue Welbilt's case to Mr. Meese.

Mr. Moreno stated to investigators that at their first meeting Mr. Wallach appeared to be genuinely interested in Welbilt and its struggles as a minority enterprise. According to Mr. Moreno, Mr. Wallach volunteered to assist the company in its efforts to obtain the Army small engine contract because Mr. Wallach said he felt the success of the

company would reflect positively on the new Reagan Administration.^{58/}

At the meeting, Mr. Wallach suggested to Mr. Mariotta that, for public relations purposes, a corporate brochure be published.^{59/} An "Evaluation Brochure" was prepared by Welbilt, and a copy was sent to Mr. Wallach. Further, although the evidence is unclear as to the exact date and place of the meeting, the indications are that sometime between Friday, April 24, 1981, and Monday, May 11, 1981, Mr. Wallach met with Mr. Meese and Mr. Meese's Deputy, Herbert E. Ellingwood, and discussed Welbilt's contract and audit problems.

^{58/} In a May 11, 1981 letter to Deputy Counselor to the President Herbert E. Ellingwood, Mr. Wallach wrote "I sincerely believe that [Mariotta] is the kind of individual which the Administration will want to feature as absolute confirmation of the desire of Americans of minority background to 'make it on their own' and share in the great American dream."

^{59/} Mr. Wallach specifically suggested in a letter dated April 24, 1981, to Welbilt that the brochure should set forth, among other things, Welbilt's corporate philosophy. "(A statement of your free enterprise commitment with emphasis upon . . . employment of the 'unemployable,' avoidance of welfare, non-dependence upon government aid as illustrations)." He also recommended "on the job" photographs "emphasizing . . . extensive racial and ethnic mix. Remember to include women. I specifically want a photograph of the employee who worked with the picture of Christ at his workstand, the 'Christ is Coming' sign on the back of the lift truck, [and] the chapel [in the factory] . . ."

**E. May 11, 1981 -- Mr. Wallach First
Writes Mr. Meese About Welbilt**

In May 1981, Mr. Wallach began an intensive campaign to persuade Mr. Meese to help Welbilt obtain the contract. This campaign was pursued through a series of letters and memoranda, as well as through telephone calls and meetings.^{60/}

In a letter dated May 11, 1981, from Mr. Wallach to Mr. Meese, Mr. Wallach referred to an unspecified previous weekend during which the Welbilt contract matter appears to have been discussed.^{61/} The letter included an indirectly stated request by Mr. Wallach that Mr. Meese intervene on behalf of Welbilt's efforts to obtain an audit and the contract:

^{60/} Copies of the letters and memoranda were retained in the White House files, and have been obtained by the independent counsel. What was conveyed orally by Mr. Wallach to Mr. Meese cannot be reconstructed precisely, but sometimes can be inferred from references in the documents to prior conversations.

^{61/} Both Mr. Meese and Mr. Wallach recalled driving together with Mrs. Meese to West Point to spend a weekend there with Mr. and Mrs. Meese's son, Michael, in celebration of his birthday and for an organ recital and dedication. Michael Meese was a cadet at West Point in the spring of 1981. Although it is unclear whether it was on that trip that Mr. Wallach left the evaluation brochure and photographs with Mr. Meese, both men acknowledged that Mr. Wallach gave the material to Mr. Meese. The evaluation brochure was obtained from White House files during the independent counsel investigation.

I wonder whether Welbilt's request for an audit is perhaps too conservative a position on their part. Perhaps a direct interview with Secretary [of the Army] Marsh or the intervention of Secretary Weinberger might be all that is necessary to accomplish the task.

In response to questions by the independent counsel, Mr. Meese acknowledged that "it's entirely possible" that he might have advised Mr. Wallach that such meetings could be arranged. "I would have no doubt that I probably did, I just can't recall it." It does not appear from the available evidence, however, that Mr. Meese personally arranged any such meetings. The evidence instead shows that Mr. Meese, upon receiving Mr. Wallach's request for assistance, directed his staff to provide assistance to Mr. Wallach on the Welbilt matter.

Mr. Meese testified that the reason he directed his staff to assist Mr. Wallach on the Welbilt contract and audit matter was, "I have a general recollection of . . . being asked by [Mr. Wallach] to see if we could be sure that the -- that Welbilt was treated properly or fairly by the Army. . . . I indicated I would see what the White House could do to be sure that they received a fair -- fair treatment or a fair hearing on the matter." He also testified that, "I knew -- I know there was an interest in my office in making sure that

they got a fair deal and that there was proper communication afforded them by the Defense Department."

As will be developed in this section of the Report, Mr. Meese did far more than to make sure that Welbilt was being treated properly or fairly by the Army. In fact, the actions of Mr. Meese and his staff were instrumental in Welbilt's successful efforts to obtain the small engine contract.

Also on May 11, 1981, Mr. Wallach wrote Mr. Meese's Deputy, Mr. Ellingwood, a memorandum to "follow up" their luncheon discussion about Welbilt. Mr. Wallach stated that he "left with Ed" a copy of the Welbilt "'evaluation brochure' and supporting photographs." Mr. Wallach wrote further that "the subject of my concern with [Mariotta] has been presented to Ed and is currently under consideration."

The May 11, 1981 letter from Mr. Wallach to Mr. Meese mentioned two aspects of the Welbilt matter that were recurrent themes in later developments during 1981 and 1982. First, the memorandum mentioned that a United States Senator had expressed interest in Welbilt. Throughout 1981 and 1982, various members of Congress expressed substantial interest to the Army, to the SBA, and to the White House in support of Welbilt's efforts to obtain the contract.

Second, the May 11, 1981 Wallach letter referred to the political recognition the White House would have if it, instead of a member of Congress, could take credit for the

award of a significant Army contract to a minority-owned firm located in the South Bronx. During the 1980 Presidential campaign, candidate Reagan had made a speech in a desolated area in the South Bronx that had been visited four years previously by President Carter. Mr. Reagan had criticized the Carter Administration for its failure to bring economic development to the South Bronx, and promised residents that, if he were elected, he would accomplish what President Carter had failed to achieve -- economic revitalization of the area.

In another letter to Mr. Meese dated May 13, 1981, Mr. Wallach reported that he learned that day from Welbilt officials that "the SBA intends to cancel four programs including this engine contract." He closed the letter by stating that "I don't know what can be done but thought you should have this information."

Throughout the course of the contract negotiations, Mr. Wallach, by letters and memoranda such as these, kept Mr. Meese informed of significant developments relating to Welbilt's efforts to obtain the engine contract. While it is unclear whether these periodic updates were solicited by Mr. Meese, he continued to receive them without objection over a period of many months, both at his White House office and at his residence. According to Mr. Wallach, copies of these letters and memoranda were sent to Mr. Meese's home in McLean, Virginia, so that Mr. Meese would get them more quickly and be

more likely to read them. Mr. Meese told investigators that he had a general practice of reading letters and memoranda sent to him by Mr. Wallach, although he currently lacked a distinct, independent recollection of reading particular letters and memoranda.

F. May 19, 1981 -- Mr. Meese's White House Staff Becomes Actively Involved in the Welbilt Contract and Audit Problem

On Tuesday, May 19, 1981, Mr. Wallach dictated a long telephone message "for E.T. [Edwin Thomas, an Assistant Counselor to the President under Mr. Meese] and E.M., [Mr. Meese], re: Welbilt." It dealt with the fact that the Administrator of the SBA, Mr. Cardenas, was "scheduled to testify [in two days in Congress] on proposed changes in the 8(a) policies of the SBA." The message included the name of the Chairman of the Congressional Committee and the hearing room that would be used. It further stated: "I have asked WELBILT to forward relevant letters directly to ET [Edwin Thomas] from New York in order to expedite." Mr. Wallach did not specifically urge any action in this telephone message, but the independent counsel infers from its length, substance and urgent tone that Mr. Wallach was hoping that a contact would be made with Mr. Cardenas.^{62/}

^{62/} During this same time period the Latin American
(Footnote Continued)

In a separate letter to Mr. Thomas, also dated May 19, 1981, Mr. Wallach enclosed the Welbilt letters referred to in the telephone message and emphasized the importance of having the Army conduct an audit.^{63/}

Shortly after receiving the May 19, 1981 letter from Mr. Wallach, Mr. Thomas asked Craig L. Fuller, a White House Office Director under Mr. Meese's supervision,^{64/} to "look into" the Welbilt matter and report back to Mr. Thomas or to Mr. Wallach. This request was made in a memorandum dated May 22, 1981, from Mr. Thomas to Mr. Fuller, that referred to Welbilt materials and signaled the level of attention to be given to the matter: "Bob Wallach, even though he uses low case, is an extremely close friend of Ed Meese." (The statement "uses low case" was a reference to Mr. Wallach's practice

(Footnote Continued)

Manufacturers Association (LAMA), of which Welbilt was a prominent member, and others were urging Mr. Cardenas and the SBA not to remove the small engine contract from the pilot program.

^{63/} In this letter, Mr. Wallach blamed the apparent impasse between the Army and Welbilt on a communication problem between them or "a deliberate effort [by the Army] to deny this contract to Welbilt. An audit would clearly demonstrate that the Welbilt price is not only right but is unaffected by any 8(a) compensatory factor."

^{64/} Mr. Fuller was Director of the Office of Cabinet Affairs under Mr. Meese and had primary responsibility for White House liaison with Cabinet members and their agencies.

of writing all of the letters of his name, both casually and formally, in the lower case.)

By a handwritten note dated May 28, 1981, on a copy of the May 22 memorandum, Mr. Fuller asked his Assistant Director, T. Kenneth Cribb, to "get a report from SBA." The full corporate name of Welbilt and the Army small engine contract number were also hand-written on the memorandum.

G. June 11, 1981 -- The Army Repeats Its Request That the SBA Withdraw the Engine Contract From the 8(a) Pilot Program

While Mr. Meese's staff was beginning to "look into" the Welbilt matter, the Army was continuing its efforts to remove the contract from the pilot program, and to offer the contract for competitive bidding.

On June 11, 1981, Ms. Watts, the Director of the Army Office of Small and Disadvantaged Business Utilization, which had authority over pilot program procurements, wrote to Robert L. Wright, Jr., the SBA headquarters official with corresponding pilot program responsibility. In her letter, she renewed the Army's April 10, 1981 request that the SBA withdraw the engine contract from the pilot program.

H. June 18, 1981 -- Mr. Wallach Writes Mr. Meese to Prevent Any SBA Decision Adverse to Welbilt

A memorandum dated June 17, 1981, from a Welbilt officer to Mr. Wallach and a memorandum dated June 18, 1981,

from Mr. Wallach to Mr. Meese, both reflected Welbilt's understanding, based on discussions with the SBA, that SBA Administrator Cardenas was unaware of White House interest in the Welbilt contract matter and was inclined to agree to withdraw the contract from the pilot program. In his memorandum to Mr. Meese, Mr. Wallach expressed concern that the SBA might be on the verge of making a decision adverse to Welbilt and, as in his May 11, 1981 letter, made a veiled request for intercession by Mr. Meese or his staff:

It is [Welbilt's] impression that Cardenas does not have any knowledge of the overall implications of this contract and does not specifically know of any interest of the White House in this proposal. . . .

The problem now, as before, is to prevent a decision from being made which is irrevocable before all of the evidence is in.

I. June, 1981 -- White House Inquiry
And SBA Action

Even as Mr. Wallach was pressing Mr. Meese to make sure that the SBA was aware of White House interest in Welbilt, Mr. Meese's staff was doing precisely that. Mr. Cribb carried out his assignment by contacting Robert A. Turnbull, SBA Associate Deputy Administrator, and on behalf of

the White House conveyed to him the Wallach/Welbilt position. Mr. Cribb apparently asked Mr. Turnbull for a response.^{65/}

On June 19, 1981, in response to Mr. Cribb's inquiries, Mr. Turnbull sent Mr. Cribb a copy of a letter written that same day by Mr. Wright of the SBA to Ms. Watts of the Army. Mr. Wright expressed a willingness to allow the Army to withdraw the small engine contract from the pilot program and conduct a competitive solicitation, but only on one condition. That condition was that the Army agree to recommence sole-source negotiations with Welbilt if the low bid from a competitive solicitation proved to be more than 10 percent higher than what the Army had earlier estimated as the fair market price. In his cover letter to Mr. Cribb, Mr. Turnbull expressed the hope that this approach was "the best possible answer to a troublesome situation that has developed over this particular procurement."

It is not clear who initiated the idea of the 10 percent stipulation. The various parties reacted to it quite differently. The SBA intended this proposal to help Welbilt.

^{65/} Mr. Turnbull had no direct responsibility within the SBA with respect to the Welbilt issue, but, as Mr. Cribb told investigators, he knew Mr. Turnbull from their prior association with the Reagan Presidential election campaign. Mr. Cribb also considered Mr. Turnbull as "sort of our contact" at the SBA on a number of matters, including the Welbilt matter.

If accepted by the Army, it would put to the test Welbilt's repeated claim that the Army's calculated fair market price was unreasonably low.

From the Army's perspective, the 10 percent stipulation was unprecedented. It would have been impossible for the Army to comply with the stipulation without violating its competitive procurement regulations, which required that a contract be awarded to the lowest bidder. The Army was not permitted to call off a competitive solicitation after the bids were opened in order to recommence noncompetitive pilot program negotiations. Thus, the Army viewed the SBA's proposal to withdraw the contract from the pilot program on this condition as unworkable and illegal.

Welbilt also opposed the 10 percent stipulation, viewing it as a delaying tactic which would have effectively precluded it from obtaining the contract.

**J. June 29 to July 16, 1981 -- Mr. Wallach
Requests Mr. Meese's Intervention to Reverse
The Army's Decision**

Mr. Wallach lost no time in conveying Welbilt's objections to the "10 percent solution" to Mr. Meese. On Monday, June 29, 1981, Mr. Wallach telephoned Mr. Meese and left an urgent and lengthy telephone message with Mr. Meese's

Administrative Assistant, Florence Randolph.^{66/} In the message typed by Ms. Randolph, Mr. Wallach reported that on Friday, June 26, 1981, Mr. Wright had advised Welbilt that his letter setting forth the 10 percent stipulation had been sent to the Army. Mr. Wallach offered his view that the SBA's 10 percent stipulation provided the Army with an easy opportunity to cease negotiations and delay matters until legislative authorization for the pilot program expired on September 30, 1981, "thus ending Welbilt's ability to obtain this contract." Mr. Wallach concluded his telephone message to Mr. Meese with the following urgent request:

Only intervention, if appropriate, from a high authority, can reverse this decision. . . .

If any action is to be taken, it will have to be very rapid.

Ms. Randolph's memorandum of the telephone message was specially tagged for Mr. Meese's priority attention.

In a memorandum dated Monday, July 6, 1981, written immediately after Mr. Wallach met in New York with Welbilt

^{66/} No record was kept at the White House of completed telephone calls. As a result, there is no record of telephone calls between Mr. Meese and Mr. Wallach. Nor is there a record of meetings or other in-person conversations between the two men at this time.

officers,^{67/} and sent by express mail both to Mr. Meese's office and to his home, Mr. Wallach wrote: "Dear Ed: There appears to be more urgency involved than I realized when we last spoke about this project."

Mr. Wallach reiterated his concern that the Army might agree to the SBA's 10 percent stipulation plan and open the contract to competitive bidding. Mr. Wallach then wrote: "For the following reasons, it seems to me that some course of action more aggressive than the one we discussed, even if less definitive than your personal intervention, is in order to avoid what may well be, and probably is, a substantial miscarriage." He then raised the audit issue again by stating:

^{67/} The Monday meeting followed the receipt of a Thursday, July 2, 1981 letter to Mr. Wallach from David Epstein, a Welbilt employee. Mr. Epstein, in his letter, complained about the Army's "so-called 'Fair Market Price'" and worried that the Army would withdraw the contract from the pilot program, and that a competitor would overcome the SBA's 10 percent stipulation by bidding below actual cost and later receive "price escalations" during production. Mr. Epstein wrote:

We all wish to emphasize that as long as the contract for this work has not been awarded, reversal of the S.B.A. (10% stipulation) letter to the Army is practical and feasible. I hesitate to tell you what you certainly know -- that a single phone call from and to an appropriate person would do it.

You may recall that I earlier mentioned that an audit had been instituted of Welbilt's bid which I had hoped had originated from your office inquiry. As it turns out, the audit was authorized but was never consummated As a result, Welbilt has never been audited to determine the propriety of its bid.

Mr. Wallach wrote that Forbes magazine and the CBS Television's program "Sixty Minutes" had contacted Welbilt to do "substantial pieces on the 'success' of this minority employment project":

Welbilt has discouraged both although it seems to me that they should encourage them. Their reasons for discouraging them is [sic] that they are still hopeful that the Administration will intercede on behalf of at least obtaining an audit which will then produce a confirmation of their bid and the issuance of the contract.

The consequences of Welbilt not receiving the contract is that they will simply remain at their current level of operation . . . but their growth will be materially delayed and their impact upon the South Bronx community similarly retarded. . . . keep in mind that this is the same area of the Bronx to which both President Carter and Candidate Reagan travelled. Carter did nothing. President Reagan has an opportunity to demonstrate this Administration's effectiveness.

In language that attributed willing involvement to Mr. Meese, Mr. Wallach concluded his memorandum with the following suggestions for further action by Mr. Meese:

When we originally spoke, you thought it might be possible to arrange a meeting of the principals of Welbilt with either Secretary Marsh or Defense Secretary Weinberger . . . If that is not possible, may I suggest that at least the person assigned to inquire into this matter on behalf of your office interview [the Welbilt officials] with a view towards getting a direct and firsthand recitation of their position as well as an opportunity to examine their plant . . .

If it is possible to advise Mrs. Watts to defer action on the stipulation for a 30-day period of time or so, prior to the expiration of the contract provisions by law, that might serve in and of itself to readjust people's perspectives concerning this contract.

It may not be too late to contact Frank Cardenas [Administrator] of the SBA. It is possible that he would be in a position to defer action as well, at least during an exploratory or investigatory period of time.

A note on a copy of Mr. Wallach's July 6, 1981 memorandum showed that it was forwarded to Mr. Cribb's attention at the White House.

On Thursday, July 16, 1981, Mr. Wallach, in an "update" memorandum to Mr. Meese, reported that, "Ms. Juanita Watts of the SBA [Army] had 'passed the buck' and forwarded the '10% stipulation' letter onto her legal department for

review. Whether this was as a result of intervention from your office or not I do not know."68/

K. July 9, 1981 -- Mr. Cribb Reports to Mr. Meese

While Mr. Wallach was barraging Mr. Meese with requests for action, Mr. Cribb was reporting the results of his inquiries to his superiors on Mr. Meese's staff and ultimately to Mr. Meese himself. On July 9, 1981, Mr. Cribb reported orally and by memorandum directly to Mr. Thomas (rather than to Mr. Fuller), and attached a copy of Mr. Turnbull's June 19, 1981 letter and the SBA's 10 percent stipulation letter.69/ Mr. Meese recalled discussing the Welbilt matter with Mr. Cribb and instructing Mr. Cribb to "stay on top of" the situation and report back to Mr. Meese in mid-August.70/

68/ On Tuesday, July 21, 1981, Mr. Epstein, a Welbilt employee, wrote in his diary the following information apparently derived from a conversation with Mr. Wallach:

Ed Thomas - Ed Meese's ass't. WALLACH. Aug. 9 Wallach in Washington. Ed M. sez Watts buck-passing a result of White House inquiry.

69/ Mr. Cribb testified [**GRAND JURY MATERIAL DELETED**] .

70/ In a July 13, 1981 handwritten note to himself reflecting a conversation with either Mr. Thomas or Mr. Cribb, Mr. Meese wrote: "Welbilt Electronics, Inc./Wallach - disc. w/Ken Cribb. Ken Cribb will stay on top of situation. S:13 Aug. 81." The final entry meant that a status report was due on August 13.

L. Ms. Watts Rejects 10 Percent Stipulation

On July 20, 1981, Ms. Watts sent Mr. Wright a response to the 10 percent stipulation letter. She explained that the Army could not accept such a stipulation without violating its procurement regulations. Then, evidently as a tactical move, she ignored the obvious intention of the SBA's letter and stated: "The Department of the Army accepts your decision to withdraw your pilot program reservation, and requests that you take immediate action to withdraw the stipulation contained in your 19 June 1981 letter." In short, the Army maintained its steady opposition to awarding the engine contract to Welbilt under the pilot program.

M. August 1981 -- Mr. Wallach Continues to Pressure Mr. Meese; Mr. Meese's Staff Continues to Intercede with SBA

Welbilt, however, remained confident of the SBA's support. An August 3, 1981 memorandum from Mr. Wallach to Mr. Meese reported Welbilt's understanding that someone at the SBA had requested the Army to return the 10 percent stipulation letter. The memorandum further stated:

[Welbilt officials] have received assurances from the SBA of a desire to aggressively pursue the obtaining of the contract by Welbilt. We shall see what develops. I assume that there is probably a very excellent explanation for this reversal of position and I can only again give you my personal assurance that the successful awarding of this contract will not only be in the best interests of our

country but will have enormous human consequences of the kind which will much more accurately reflect the true attitude of the Administration for the advancement of everyone's effort to achieve economic security, regardless of background.

This report reflected Welbilt's apparent ignorance of the specific contents of Ms. Watts' July 20, 1981 letter. It also reflected Welbilt's belief, apparently based upon information received from the SBA, that the SBA would now make no further concessions to the Army and would "aggressively pursue the obtaining of the contract by Welbilt."^{71/}

Mr. Wallach met with Mr. Meese on August 10, 1981, and may at that time have provided Mr. Meese with additional materials relating to the Welbilt matter. In a memorandum to Messrs. Mariotta, Neuberger and Moreno dated August 11, 1981, Welbilt employee David Epstein recorded what Mr. Wallach had reported to him by telephone:

bob wallach phoned report that his friend [Mr. Meese] has the material given bob in Washington;

that there's no question but that his intervention has produced such good results as have occurred;

^{71/} Mr. Wallach's cryptic reference to an "excellent explanation" for SBA's newly-strengthened support, followed immediately by his "personal assurance" that receipt of the contract by Welbilt would benefit the Administration, may imply his belief that SBA's reversal was produced by the White House.

that bob's friend will not 'surface' on the matter but will otherwise 'pursue' it.

Mr. Epstein also made a diary entry on August 11, 1981, consistent with this memorandum: "b.w. [Bob Wallach] Conduct up to now favorable result of WH intervention. Not surfacing. Will prevent Army from slipping by."

Meanwhile, Mr. Meese's staff continued to follow the Welbilt matter. On August 12, 1981, Mr. Cribb sent Mr. Thomas the status memorandum earlier requested by Mr. Meese. The memorandum reflected Mr. Cribb's additional discussions with Mr. Turnbull at the SBA. Notably, Mr. Cribb reported on the SBA's understanding that the Secretary of the Army retained legal authority to require the SBA either to accept the Army's price or to withdraw the engine contract from the pilot program. He further reported the SBA's intention to continue its efforts to persuade Ms. Watts to agree to the 10 percent stipulation, and in any event to try to dissuade the Secretary of the Army from compelling withdrawal of the contract from the pilot program. Specifically, the memorandum stated:

At last word, SBA had not received the signed stipulation from the Army, but was sanguine that the Army would so stipulate. . . .

Bob Turnbull (assistant to Cardenas) indicates that SBA will make a last-ditch effort to persuade Juanita Watts at Army to sign the agreement.

SBA had made a good faith effort to achieve an equitable solution to this

problem, but has run into a stone wall at the Army.

**N. Decision by the Army to Conduct an Audit
And a Technical Review of Welbilt's
Contract Proposal**

In the latter part of August 1981, another lobbyist for Welbilt, Stephen Denlinger, President of LAMA,^{72/} raised the Welbilt matter with Pier Talenti, who was an unpaid volunteer in the White House Office of Political Affairs headed by Assistant to the President Franklyn C. Nofziger. In late August, Mr. Talenti visited the Welbilt plant in the South Bronx, and was impressed with Welbilt's apparent capabilities.

On Friday, August 28, 1981, Mr. Talenti met in his office at the White House with three Army representatives who briefed him on the Welbilt matter.^{73/} The meeting was attended by Ms. Watts and the Deputy Director for Small Business, Colonel Albert R. Spaulding, and by Robert J. Stohlman, an official in the office of J. Raymond Sculley, the Assistant Secretary of the Army responsible for procurement.

^{72/} LAMA is an Hispanic lobbying group which, among other things, monitored the 8(a) Program.

^{73/} On Monday, August 31, 1981, Mr. Wallach wrote Mr. Meese about the Talenti meeting, and reminded Mr. Meese of the "September deadline that relates to the expiration of the SBA Minority Program."

Mr. Stohlman had oversight responsibility in Dr. Sculley's office for all pilot program procurements.

Mr. Stohlman and his immediate superior, George E. Dausman, had authority to order the audit and technical review that Welbilt supporters had repeatedly requested. Prior to the meeting with Mr. Talenti, Mr. Stohlman had been aware of and had resisted the efforts of Welbilt, the SBA, and various members of Congress to cause the Army to conduct such an audit. The meeting called by Mr. Talenti was the first indication to Mr. Stohlman that the White House had taken an interest in the matter.

Immediately before the meeting with Mr. Talenti, the Army procurement office had prepared a competitive solicitation for the small engines contract, and planned to release the solicitation as early as the end of August of 1981. Such action, however, depended on the withdrawal of the contract from the pilot program.

In sworn trial testimony and in interviews, Mr. Stohlman stated that his meeting with Mr. Talenti was a critical factor in his and Mr. Dausman's decision in early September to order an audit and technical review of Welbilt's proposal. Shortly after that decision, the Army received a letter from the SBA, dated September 3, 1981, which reasserted the SBA's intention to keep the engine contract in the pilot program.

On September 15, 1981, Ms. Watts informed the SBA in a letter that the Army would, after all, conduct the oft-requested audit. Further, despite the expiration of the pilot program on September 30, 1981, the Army determined as a matter of policy to handle the engine contract as though the requirements of the pilot program remained applicable.

O. Interlude of Apparent Non-Involvement by Mr. Meese and His Staff

Throughout the balance of 1981, while the Army's audit was conducted and evaluated, Mr. Wallach continued to report developments to Mr. Meese, but there is no indication that Mr. Meese or his staff had any further active involvement in the Welbilt matter until the spring of 1982. In at least the following instances, Mr. Wallach sought to keep Mr. Meese informed about the Welbilt matter: a memorandum to Mr. Meese dated August 31, 1981, a telephone message to Mr. Meese dated September 1, letters to Mr. Meese dated October 5,^{74/} and

^{74/} In the October 5, 1981 letter Mr. Wallach wrote that one government department did not know what is happening in another, "but I would hope that it would not be left to chance."

October 6, a memorandum to Mr. Meese dated October 7,^{75/} and a letter to Mr. Meese dated December 30, 1981.^{76/}

P. January 15 - September 1982 -- Continuing Negotiations between Welbilt and the Army; White House Intervention Leads to Welbilt's Being Awarded the Contract

The Army audit and technical review was completed in late November 1981. The Army separately undertook a review of its own fair market price for the engine contract, and adjusted the price upwards to \$23.7 million. The price gap between Welbilt and the Army therefore narrowed, but still was about \$15 million.

^{75/} In the October 7, 1981 memorandum, Mr. Wallach reported that an Army employee [Dr. Thomas J. Keenan] who had been instrumental, according to Mr. Wallach, in opposing the Welbilt contract was quoted as saying he had "great skill in dealing with and countering White House pressure."

^{76/} Although there was at least one occasion during this period when Mr. Meese met with SBA Administrator Cardenas (on October 30, 1981), that meeting involved other matters, and there is no evidence that the Welbilt matter was discussed. Mr. Meese had a general recollection of meeting with Secretary Marsh on several occasions during 1981 on many other issues, but had no specific recollection of discussing the engine contract with him. Mr. Meese told investigators that it is possible that he discussed the matter with Secretary Marsh. Secretary Marsh had no recollection of any conversations with Mr. Meese concerning this particular matter.

On December 7, 1981, Mr. Meese wrote a response to an October 26 letter concerning the 8(a) Program from Stephen Denlinger. There is no specific mention of Welbilt in Mr. Meese's letter. In a second letter to Mr. Denlinger dated February 22, 1982, Mr. Meese stated: "This Administration is very familiar with Welbilt."

1. January 15, 1982 -- The SBA Hosts A Meeting On The Price Discrepancy

On Friday, January 15, 1982, SBA, Army and White House representatives attended a meeting in the Administrator's conference room at the SBA. Administrator Cardenas attended at least part of the meeting. The principal purpose of the meeting was to permit the Army to explain its concerns about Welbilt's proposal, particularly the price. The Army, through its representatives, Mr. Dausman and Colonel Spaulding, emphasized at the meeting that the Army's revised price was not negotiable. Donald R. Templeman, Deputy Administrator of the SBA, stated that he and other SBA officials had doubts at that time about the wisdom of awarding the contract to Welbilt.

Mr. Talenti attended the SBA meeting along with Henry Zuniga, a Special Assistant to the President in the Office of Public Liaison. On Monday, January 18, 1982, Mr. Talenti met in his office in the White House with Welbilt representatives, and reported to them the results of the SBA meeting.

On Tuesday, January 19, 1982, Mr. Wallach gave Mr. Meese a written report on the SBA-Army meeting and its aftermath. Mr. Wallach wrote:

Apparently, Telenti [sic] was present at the meeting and indicated afterwards that this was "Lyn's [Nofziger] last week and it

would be nice if he could go out with a bang and get this contract." . . .

My only thought is that the Army can be pressured into making the bid available to Welbilt and if Welbilt accepts it will be impossible for them to back away from the agreement.

This letter was referred to Deputy Counselor to the President James E. Jenkins for action, and a copy was sent to Mr. Meese for his information and his evening reading file. Mr. Jenkins testified that he took no action on Mr. Wallach's letter.^{77/}

2. April 8, 1982 -- Mr. Nofziger Lobbies Mr. Meese on Behalf of Welbilt; Mr. Meese Authorizes His Deputy to Take Action

On March 8, 1982, having left his position at the White House on January 22, 1982, and formed a consulting firm in partnership with Mark A. Bragg, Mr. Nofziger was retained as a consultant by the LAMA. One of his principal assignments

^{77/} Mr. Jenkins was appointed as Mr. Meese's Deputy in October 1981. He remained in that position until April 15, 1984.

Mr. Jenkins had known Mr. Meese since 1967. Mr. Jenkins served Governor Reagan successively as his representative in Washington, D.C., his Public Affairs Chief, and his Secretary of Health and Welfare. Mr. Meese was Mr. Jenkins' immediate superior in Governor Reagan's Office, first as his Executive Secretary and subsequently as his Executive Assistant and Chief of Staff.

was to assist Welbilt, a member of LAMA, in its efforts to obtain the small engine contract.

On April 5, 1982, Mr. Nofziger met and discussed the Welbilt matter with Mr. Meese.^{78/} On April 8, 1982, Mr. Nofziger wrote a memorandum to Mr. Meese in which he sought to influence Mr. Meese respecting the Welbilt matter:

Welbilt appears to be well qualified to do the work, but it is having some problems with the Army which wants to go back to the old supplier, even though awarding the contract to Welbilt would be a major first step in the President's commitment to revitalize the South Bronx.

I may have misspoken when [during the April 5 discussion] I said I thought [Deputy Secretary of Defense] Carlucci would make the decision; it being an Army contract, I suppose [Secretary of the Army] Jack Marsh would have the final word, but at the same time, I am sure he would listen carefully to Carlucci or [Secretary of Defense] Weinberger or Meese or even Reagan.

Ed, I really think it would be a blunder not to award that contract to Welbilt. The symbolism either way is very great here.

This communication to Mr. Meese formed the basis of one of the counts on which Mr. Nofziger was convicted in February 1988 for violating 18 U.S.C. § 207(c), which

^{78/} Mr. Meese and Mr. Nofziger have known each other since December of 1966, when both were members of governor-elect Reagan's staff. Mr. Jenkins has also known Mr. Nofziger since 1957, when Mr. Jenkins worked in the Pentagon and Mr. Nofziger was a reporter.

prohibits certain former government officials from lobbying their former agencies on certain matters for a period of one year after leaving their positions in government.

There is no doubt that Mr. Meese received the April 8, 1982 memorandum. During the trial of Mr. Nofziger, Mr. Jenkins testified flatly that: "He got it." Mr. Meese testified: "I believe I probably saw a copy of this memorandum." He also testified that, on the basis of the memorandum, he believed that he did discuss it with Mr. Nofziger on April 5, 1982.

The Ethics in Government Act prohibits such lobbying contacts by certain recent employees of the White House. The White House guidelines, promulgated by White House Counsel Fred F. Fielding, restrict White House involvement in government procurement matters.^{79/} Nevertheless, as will be

^{79/} In a memorandum dated July 13, 1981, to all members of the White House staff concerning standards of conduct, Counsel to the President, Fred F. Fielding, admonished employees about making contacts with government agencies about procurement matters:

Procurement Agencies: . . . Obviously, no member of the White House staff should contact any procurement officer about a contract in which he has a personal financial interest or in which a relative, friend, or business associate has a financial interest. This is true not only as to calls or contacts in which influence is directly exerted, but also as to so-called "status" calls or other communications which might direct the attention of the procurement officer to the fact that the White House staff

(Footnote Continued)

developed below, Mr. Meese raised no questions about the propriety of Mr. Nofziger's contacts on the Welbilt matters and did nothing to discourage them. On the contrary, Mr. Meese not only accepted Mr. Nofziger's overtures on behalf of his client but he authorized his Deputy, Mr. Jenkins, to take affirmative action in the matter. Mr. Jenkins in turn took vigorous and controversial steps on behalf of Mr. Meese and the White House to assist Welbilt -- steps that were urged upon Mr. Meese's office by Messrs. Nofziger and Wallach.

A copy of Mr. Nofziger's April 8, 1982 memorandum was routed to Mr. Jenkins for action, although Mr. Meese did not recall whether he directed Mr. Jenkins to take particular actions. When asked at the trial of Mr. Nofziger if he recalled discussing this memorandum with Mr. Jenkins, Mr. Meese testified, "I am sure I did discuss it with him at sometime during 1982 and probably after the date of this memorandum."

(Footnote Continued)

member has an interest. . . .

To avoid the appearance of conflict and subsequent embarrassment, White House staff members who feel they must contact procurement agencies with regard to pending matters should also first contact the Office of the Counsel to the President.

This admonition was repeated at page E-10 of the White House Office Staff Manual, which was distributed to all White House staff in October 1981.

3. April 16, 1982 -- The Army Decides
To Withdraw the Small Engine Contract
From the SBA 8(a) Program

On April 16, 1982, Secretary of the Army John O. Marsh, Jr. met with several top Army officials about the small engine contract. Assistant Secretary of the Army Dr. J. Raymond Sculley testified at the Nofziger trial that the unanimous decision at the meeting was that it was not in the interest of the United States government for the contract to be awarded to Welbilt, and that steps should be taken to release the contract for competitive bidding.

The SBA, members of Congress, and Mr. Denlinger were notified by the Army of its decision to seek competitive bids on the contract, and were informed that the decision was "fully justified and in the best interest of the government." Mr. Denlinger said he was "very dejected by this response."

4. April 16, 1982 -- Deputy Counselor James E.
Jenkins Takes White House Action with
Mr. Meese's Approval

Meanwhile, Mr. Nofziger's request to Mr. Meese that he intercede on Welbilt's behalf had led to efforts by Mr. Jenkins, with Mr. Meese's approval, to inform the Army, the SBA and other agencies of White House interest in the contract. Those steps were strongly opposed by Mr. Fuller and White House counsel Mr. Fielding, both of whom believed that intervention in a procurement matter was inappropriate.

On Friday, April 16, 1982, the same day that the Army made a "final" decision to withdraw the small engine

contract from the pilot program in the interests of the United States, Mr. Jenkins sent the following memorandum to Mr. Fuller:

Lyn Nofsiger [sic] has asked Ed Meese to urge the Army to award this contract to Welbilt instead of to Chrysler. The Bronx needs the jobs.

I think that, instead, Ed (by memo) or you, directly should simply ask for a status report, or for a copy of the response to [previous LAMA correspondence to Army General Counsel Delbert L.] Spurlock. Quite possibly, we should do nothing at all. Do you have existing guidance on this type of thing?

On Saturday, April 17, 1982, Mr. Fuller wrote a note on Mr. Jenkins' April 16th memorandum and returned it to Mr. Jenkins. The note read:

"Jim Jenkins -- I strongly recommend that no White House action be taken. C.F."

5. **April 22, 1982 -- Mr. Jenkins Schedules
A White House Meeting on Welbilt Contract
Against Advice of White House Counsel**

Despite Mr. Fuller's strong adverse recommendation, Mr. Jenkins scheduled a White House meeting for May 19, 1982.^{80/} He invited representatives of the Army, the SBA,

^{80/} Mr. Jenkins wrote: "Too late. Army wants to solve" on the April 16 memorandum in response to Mr. Cribb's admonition.
(Footnote Continued)

Welbilt, LAMA, and the Urban Development Action Grant program (an agency of HUD) to attend.

On Thursday, April 22, 1982, Mr. Jenkins wrote a letter to the Administrator of the SBA, James C. Sanders,^{81/} sending a copy to Mr. Fuller. Mr. Jenkins wrote:

Ed Meese has asked me to look into the Welbilt problem (see attached letter)^{82/} which has been too long on the back burner.

I expect that a meeting here between the Army, Welbilt, SBA, plus others possibly, will be necessary in order to resolve the issue. However, before I call such a meeting, I would like to meet privately to be briefed on SBA's role, its actions to date, commitment if any, etc., and to get SBA's recommendation.

(Footnote Continued)

Mr. Jenkins later told the staff of the United States Senate Subcommittee on Oversight of Government Management that the reason he disregarded Mr. Fuller's admonition was that Mr. Fuller "wasn't my boss, so he couldn't tell me not to." Report of the United States Senate Subcommittee on Oversight of Government Management: Wedtech: A Review of Federal Procurement Decisions, May, 1988, p. 42.

^{81/} On February 5, 1982, Mr. Cardenas resigned as Administrator of the SBA, and Mr. Templeman became Acting Administrator. Mr. Sanders was confirmed by the United States Senate as the new Administrator on March 29, 1982.

^{82/} Attached was a lengthy letter dated April 15, 1982, from General Counsel of the Army Delbert L. Spurlock, Jr. to Mr. Denlinger which explained the many reasons why the Army had decided that it was in the best interest of the United States to withdraw the small engine contract from the pilot program.

On Saturday, May 1, 1982, Mr. Fuller wrote a note to White House Counsel Fielding on his copy of the April 22 letter. The note read:

To: Fred Fielding

How advisable is this?

Let's discuss if some action is required.

C.F.

In an interview with the office of independent counsel, Mr. Fuller stated that he wrote the note to Mr. Fielding because he believed that the White House should not get involved in contract matters. Mr. Fuller knew that the White House Counsel's Office had circulated a memorandum detailing the extent of appropriate contacts between the White House and government agencies. Mr. Fuller concluded that any White House contact with the Army on the Welbilt contract was inappropriate.

One of Mr. Fielding's assistants, H.P. Goldfield, an Associate Counsel to the President, wrote a note in response to Mr. Fuller's query. It was dated May 11, 1982: "It is a procurement matter. The White House should not get involved unless it's a question of impropriety or illegality by the Department of the Army, in which case Counsel's Office should do. J.J. (Jim Jenkins) should not call meeting, per H.P."

Mr. Fuller had no independent recollection of a conversation with Mr. Jenkins on this subject, but noted that

the White House "tracking sheet" accompanying the memorandum reflected the fact that Mr. Fuller closed the matter on May 12, 1982, after reviewing it with Mr. Jenkins.

Mr. Jenkins testified before the grand jury that [

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although he read and responded negatively to Mr. Fuller's strong recommendation that "no White House action be taken."

Mr. Jenkins testified at the trial of Mr. Nofziger that he "did not recall" telling Mr. Meese in advance of the May 19 meeting that the meeting was taking place but he was "sure [he] did [tell Mr. Meese]." When Mr. Jenkins first appeared before the grand jury on March 17, 1987, in this investigation he testified that [

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In preparation for the May 19, 1982 White House meeting, Mr. Jenkins summoned SBA Administrator Sanders to meet with him at the White House on May 7, 1982. Mr. Sanders testified at the trial of Mr. Nofziger that "Mr. Jenkins wanted me to understand the importance of this project to the White House and the South Bronx." Mr. Jenkins testified that he confirmed with Mr. Sanders that Welbilt was technically qualified and that the SBA would so certify. Mr. Jenkins also

received confirmation from Mr. Sanders that the proposed contract had been set aside as a pilot program contract.^{83/}

6. **May 19, 1982 -- Mr. Jenkins Hosts White House Meeting Concerning Welbilt and the Small Engine Contract**

Mr. Jenkins presided at the May 19, 1982 meeting. He testified at the Nofziger trial that he made it clear that he would "not tolerate" any obstructionist tactics or bureaucratic foot-dragging within the Army or the SBA in the effort to reach a satisfactory negotiated contract with Welbilt. He announced to those present that if he encountered any such resistance, he would call their superiors.

This forceful approach had its intended effect. The Army representatives specifically recalled Mr. Jenkins' reminding them at the meeting about the President's campaign promise to the depressed South Bronx, and how "the placement of this contract in the South Bronx under [the pilot program] would . . . keep a campaign promise." Mr. Templeman, who represented the SBA at the May 19 meeting, testified that the SBA "would not have gone along with the contract had it not

^{83/} The May 19, 1982 meeting was particularly timely and helpful from Welbilt's perspective, because at a meeting on April 16, 1982, as indicated earlier, the highest officials in the Army including Secretary Marsh had decided that the small engine contract would have to be withdrawn from the pilot program and offered for competitive bids in the best interest of the United States.

been for Mr. Jenkins' interest." According to Mr. Templeman, in anticipation of the White House meeting and because of the White House interest, the SBA decided before the meeting that it would commit more business development expense (BDE) funds and advance payment loans to Welbilt than it would ordinarily have been willing to commit.^{84/} Mr. Templeman made these commitments orally to Mr. Jenkins at the White House meeting.

**Q. June 18, 1982 -- SBA Administrator
Approves \$3 Million BDE Grant and a
\$2 Million Advance Payment Loan Assistance
To Welbilt at the Urging of Mr. Jenkins**

Between May 19 and June 18, 1982, there was a series of telephone calls and communications between Mr. Jenkins, the Army, the SBA, Welbilt and Mr. Nofziger's consulting firm concerning the Army's intentions and the SBA's financial commitments to Welbilt.

After the May 1982 meeting, the Army expressed a willingness to reevaluate its fair market price. Welbilt submitted to the Army and the SBA a revised contract proposal based on a financing plan that took into account promised SBA (and other) assistance, thus permitting Welbilt to make a substantial reduction in its proposed contract price.

^{84/} This action resulted in a commitment to Welbilt of more than one-half of SBA's BDE expenditures for the entire 1982 fiscal year.

In mid-June 1982, Mr. Jenkins once again exerted White House pressure by telephoning Deputy SBA Administrator Templeman demanding to know "what was holding [SBA's written BDE and cash advance commitments] up." Mr. Templeman testified that, as a result of that inquiry, he "expedited and got [the commitment] signed."

On June 18, 1982, in response to Mr. Jenkins' pressure, Mr. Sanders signed separate letters of commitment to Welbilt for \$3 million in BDE funds and for \$2 million in advance payment loans. These commitments were made despite the fact that the SBA had received no formal request for them from Welbilt. Welbilt's formal requests were not submitted to the SBA until June 28, 1982, ten days after the SBA acceded to the White House demand that the commitments be expedited.

During the months of May and June 1982, there were a number of telephone calls and meetings between Mr. Meese and Mr. Wallach. Mr. Wallach told investigators that he had no recollection of being involved in the particular Welbilt-related events discussed in this section. Mr. Meese stated that his only recollection of these particular issues was "that Mr. Jenkins was generally working on this matter."

On June 24, 1982, however, Mr. Epstein of Welbilt wrote private investigator Harold K. Lipset that:

I spoke with bob this evening He sed
[sic] there's nothing to report -- that he
urged Jenkins to urge the Secy of the Army

Marsh to get the contract signed on the basis of agreement already reached . . .

bob will be in Washington . . . the week of June 28 . . . he expects to talk with Ed on Tuesday . . . he also said that the matter will be handled by Jenkins, most likely, and not by Ed.

Mr. Wallach, upon reading the Epstein letter, acknowledged to investigators that he must have had dealings with Mr. Jenkins in June 1982 on the Welbilt contract, but he claimed "no independent recollection" of such dealings.

R. September 1982 -- The Army Awards Small Engine Contract to Welbilt

Mr. Jenkins' continued involvement in smoothing the way for Welbilt to obtain the engine contract is reflected in a memorandum of a September 13, 1982 telephone call to Mr. Jenkins from Mr. Bragg, Mr. Nofziger's business partner, which stated:

Mark Braggs' called very happy.
332-4030

SBA offer \$27 Million to Army and they presented it to Welbilt and Welbilt accepted it.

They are going to meet with John Marsh on Friday.

(don't know what you did but he says its working)

The small engine contract was finally awarded to Welbilt on September 28, 1982.^{85/} Shortly thereafter, in a private note to Mr. Meese attached to a LAMA publication announcing the award of the engine contract to Welbilt, Mr. Jenkins stated: "EM -- Though you cannot tell from reading any of this, your personal 'go ahead' to me saved this project."

Mr. Meese testified before the grand jury and during the trial of Mr. Nofziger that he had little memory of the documented events about Mr. Wallach's and Mr. Nofziger's contacts with him concerning Welbilt's efforts to obtain the small engine contract. In view of (1) Mr. Meese's close personal relationships with Mr. Wallach and Mr. Nofziger; (2) the intense interest of those two individuals in Welbilt; (3) the written and oral communications from them to Mr. Meese; (4) Mr. Jenkins' various efforts on Welbilt's behalf; and (5) Mr. Jenkins' testimony that he discussed the matters with Mr. Meese, the independent counsel has concluded that Mr. Meese was aware of and sanctioned the actions of his staff in assisting Welbilt in the matters described above.

^{85/} The awarding of the small engine contract to Welbilt was a matter of extreme importance to the company and to a number of individuals, including Mr. Wallach and the officers of Welbilt. Receipt of that contract was the first significant step leading toward Welbilt's "going public."

**III. MR. WALLACH'S ACTIVITIES ON WELBILT'S BEHALF IN
1982 AND 1983**

Mr. Meese's next direct involvement on behalf of Welbilt did not occur until the summer of 1983. In order to understand the background of that transaction, however, it is necessary to trace briefly the history of Welbilt, and of Mr. Wallach's relationship to it, during the period between May 1982 and May 1983.

**A. December 17, 1982 -- Mr. Wallach Proposes a
Consulting Agreement with Welbilt and Fee
Payments for the Post-Contract Award Period**

Mr. Wallach received no compensation for services performed before October 1, 1982, although he was reimbursed for expenses. On December 17, 1982, Mr. Wallach sent a letter to Mr. Moreno, Treasurer of Welbilt, in which he outlined a "Legal and Policy Advisor" agreement that they had reached on the previous Friday, December 10, 1982, in New York City. The agreement provided that Mr. Wallach would be paid a total of \$200,000 over a fifteen month period, consisting of \$30,000 for "advisory services" from October 1, 1982 through December 31, 1982, \$10,000 a month for professional services for 1983 and a \$50,000 retainer fee in January 1983. The agreement also provided that Mr. Wallach's air fare expenses would be paid for by the company. Finally, the agreement provided that Mr. Wallach would receive one percent of the income generated by sales of the company's coating process and five percent of

any sales generated by Mr. Wallach in connection with the coating process.^{86/}

The "Legal and Policy Advisor" agreement was never signed, apparently because Welbilt had insufficient funds in the winter and spring of 1982 and 1983 to fulfill any promises to pay Mr. Wallach. Messrs. Mariotta and Moreno did orally agree, however, that Welbilt, when it could afford it, would pay Mr. Wallach for his past services in connection with Welbilt's efforts to obtain the small engine contract.

Anthony Guariglia, who became Vice President and Comptroller of Welbilt on May 15, 1983, stated that he was unaware of this specific agreement to compensate Mr. Wallach. However, he was told by Mr. Moreno [

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Mr. Guariglia stated that [

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^{86/} Welbilt hoped to develop, patent and market a new process for coating metals. The coating process was never developed commercially, and one of the Wedtech officers believed that this part of the agreement was wishful thinking on Mr. Wallach's part.

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In fact, all four of the convicted former officials of Wedtech -- Guariglia, Moreno, Shorten, and Neuberger -- stated to the office of independent counsel that Mr. Wallach's principal role from the beginning was to use his connections with Mr. Meese on the company's behalf.

**B. January 1, 1983 -- Welbilt Promises
Mr. Wallach One Percent of the Outstanding
Shares of the Company's Common Stock**

Despite the company's cash poor position in early 1983, the Welbilt officers were anxious to find a way to compensate Mr. Wallach and others who were assisting the company. While they could not at that time afford to pay Mr. Wallach anything for his past services, they did agree to make a commitment to give him one percent of the company's common stock at the time of the public offering. At the time the Wedtech officers believed that Mr. Wallach's one percent share in the company would be worth \$1 million.

**C. Welbilt Financial Crisis and Mr. Wallach's
Efforts to Alleviate It**

By early spring 1983, Mr. Wallach became aware of a major financial problem that would have to be solved if he were to receive the fees contemplated by the unexecuted

December 1982 "Legal and Policy Advisor" agreement, and if the promised stock were ever to have any significant value.^{87/} The company was on the verge of bankruptcy and desperately needed a short term bridge loan in the amount of \$3 million.

As discussed below, Mr. Wallach undertook to help the company deal with this severe financial problem, and through those efforts to obtain the full value of the promised stock and his fee for past services.

1. March 30, 1983 -- Mr. Wallach Requests
Presidential Recognition of Welbilt

According to the cooperating Wedtech officers, Mr. Mariotta was very impressed with Mr. Wallach's White House connections and the apparent ease with which he was able to gain access to Mr. Meese in the White House. Even minor examples of Mr. Wallach's access reaffirmed Mr. Mariotta's belief that Mr. Wallach was an important asset for Welbilt's future and deserving of a share in the company's good fortunes.

^{87/} Mr. Wallach, in an advisory letter written to the Welbilt officers on May 19, 1983, attempted to minimize his own financial stake in the Welbilt financial crisis:

The financial rewards, if any, are a far more speculative motivation for me than the accomplishment of the concepts which you have so effectively intertwined to produce not only a successful financial venture but a meaningful social contribution.

For example, on May 15, 1983, Mr. Mariotta and Fred Neuberger, Welbilt's vice president, were scheduled to be honored with the Humanitarian Award of the Save Russian Jewry Educational Institute at a large dinner at the Waldorf-Astoria in New York City. On March 30, 1983, Mr. Wallach wrote to Mr. Meese requesting an "appropriate" letter congratulating the two men on their contributions "to the Administration efforts to the urban zone concept." In response, Mr. Meese arranged for Presidential congratulatory letters to be written, signed and sent on May 12, 1983.

In his memorandum of March 30, 1983, Mr. Wallach also requested Mr. Meese to inquire into the possibility of a Presidential trip to Welbilt. Such a Presidential visit to Welbilt had been scheduled in the fall of 1982 in connection with the signing of the small engine contract, but was cancelled at the last minute because of an unexpected conflict.

2. **April 1983 -- Mr. Wallach Arranges for
The Law Firm of Squadron, Ellenoff to be
Retained by Welbilt to Assist Primarily
In Financing Matters**

On or before April 14, 1983, Mr. Wallach arranged for Welbilt to retain Howard M. Squadron and the law firm of Squadron, Ellenoff, Plesent & Lehrer as general outside counsel to Welbilt to assist the company with, among other

things, its severe financial problems.^{88/} Mr. Wallach negotiated an arrangement with Mr. Squadron's firm by which Mr. Wallach received 20 percent of all legal fees paid to the firm by Welbilt. Over the next three and one-half years, the Squadron, Ellenoff firm paid at least \$227,000 to Mr. Wallach under this agreement.

**3. May 5, 1983 -- Moseley, Hallgarten
Agrees to Underwrite the Initial Public
Offering of Welbilt Stock**

At some time early in 1983 the Welbilt officers decided they wanted to have a public offering of Wedtech stock and, in effect, relinquish Welbilt's minority-owned status.

On May 5, 1983, the investment banking firm of Moseley, Hallgarten, Estabrook & Weeden, Inc., sent Welbilt a letter of intent, on a firm commitment basis, to underwrite the initial public offering of 1,750,000 shares of common stock in the company. Based on an expected offering price of \$16 to \$18 per share, the offering would raise approximately \$29 million: \$25 million from the sale of shares to be issued by the company and \$4 million from the sale of shares to be sold by Messrs. Mariotta, Neuberger and Moreno in a secondary offering. The company's financial advisers estimated that

^{88/} Mr. Wallach had previously introduced Mr. Squadron to Welbilt in the late summer of 1982 for the purpose of using Mr. Squadron's connections at Bank Leumi as an introduction for Welbilt to that bank.

Over time one percent of the company's outstanding common stock would be worth \$1 million.

4. Stock Dilution and Distribution Plan

Immediately before the public offering, Mr. Mariotta owned 45.5 percent of the stock, Mr. Neuberger owned 45.5 percent, and nine percent was owned by Mr. Moreno. Early in April 1983, these three individuals agreed to a 15 percent dilution of their ownership to permit interests in the company to be given to other insiders and friends of the company. This included 1.5 percent to Mr. Guariglia, 1.5 percent to Laurence Shorten, Chief Financial Officer, 2.5 percent to Richard M. Biaggi, 2.5 percent to General Bernard G. Ehrlich, 0.5 percent to Mr. Nofziger, 0.5 percent to Mr. Bragg, and one percent to Mr. Wallach.

Welbilt and those individuals entered into letter agreements respecting the issuance of the stock which provided, among other things, that the stock would be subject to the restrictions on sale contained in Rule 144 of the Rules of the Securities and Exchange Commission. Mr. Wallach's letter agreement dated May 25, 1983, stated that the stock was being issued to Mr. Wallach "in appreciation of the invaluable contributions you have made to the growth and vitality of the Company."

On June 17, 1983, when the company split its stock, Mr. Wallach's holdings amounted to 45,000 shares, which

constituted one percent of the outstanding shares of Welbilt's stock.

5. Bank Leumi Bridge Loan Negotiations

While arrangements for the public offering of Welbilt stock were going forward, Mr. Squadron assisted Welbilt in negotiations with an Israeli bank with offices in New York, Bank Leumi, to obtain a \$3 million bridge loan to stave off bankruptcy.^{89/} The company had amassed a large amount of accounts payable, and also was delinquent in its long-term debt obligations, primarily those owed to the Economic Development Administration (EDA) of the United States Department of Commerce. The total of the company's obligations to EDA at this time for direct and guaranteed loans was approximately \$4 million. In order to obtain the loan from Bank Leumi, which was crucial to avoiding bankruptcy and to going forward with the public stock offering, Welbilt would

^{89/} In September 1982, Bank Leumi had agreed to provide Welbilt with a \$2.3 million line of credit, subject to EDA subordinating its security interest in accounts receivable, inventories and contract rights to Bank Leumi. In the fall of 1982, EDA was also asked to subordinate its security position to the SBA so that the SBA would agree to advance payments to Welbilt. EDA refused the Bank Leumi subordination request, but agreed to the SBA subordination request.

Welbilt continued to negotiate with Bank Leumi and EDA in late 1982 and early 1983 for a larger loan package that would give Welbilt a new line of credit, and would entail assumption by Bank Leumi of Citibank's loan to Welbilt, which was guaranteed by EDA.

have to persuade EDA to subordinate its position to that of Bank Leumi.

IV. MR. MEESE'S INVOLVEMENT IN WELBILT'S EFFORTS TO PERSUADE EDA TO SUBORDINATE ITS INTERESTS TO THOSE OF BANK LEUMI

The EDA provides financial assistance to entities in economically distressed areas of the country. In February 1980, the EDA had provided Welbilt \$2.04 million in a direct working capital loan, and had guaranteed a \$2.71 million Citibank loan to Welbilt. These loans were still outstanding in early 1983. As noted above, Bank Leumi declined to extend credit to Welbilt unless its security interests would be superior to those of EDA.

Authority to approve Welbilt's application for EDA to subordinate its interests to those of Bank Leumi rested with the Assistant Secretary for Economic Development, Carlos C. Campbell. As in the case of the Army small engine contract, when Welbilt ran into difficulties with the approving official, it sought to influence the decision-maker through Mr. Nofziger's lobbying efforts and through Mr. Wallach's relationship with Mr. Meese.

A. March 1983 -- EDA Makes a Field Visit to Welbilt and Notes Management Problems and Delinquencies in Loan Payments

On March 15, 1983, John Geraghty, the EDA Project Officer in Philadelphia responsible for Welbilt, made a field visit to Welbilt's plant. In his report of the visit he noted

that Welbilt had "management problems," and was delinquent in its EDA loan payments. On April 27, 1983, Edward Morris, Chief of the Business Loans Division at the EDA Philadelphia Regional Office, sent Mr. Mariotta a letter pointing out that Welbilt's EDA loan was delinquent. Welbilt's financial crisis was now acute.

B. May 1983 -- Bank Leumi Agrees to a \$5.7 Million Loan Package for Welbilt if EDA Would Subordinate its Interest in Collateral

Welbilt's negotiations with Bank Leumi bore fruit in early May 1983, when Bank Leumi approved a loan package totaling \$5,700,000. The package was to include a \$3,500,000 line of credit for working capital as well as the assumption by Bank Leumi of Citibank's loans to Welbilt in the amount of \$2,200,000, which had been guaranteed by EDA and SBA. Closing the loan agreement between Welbilt and Bank Leumi was contingent on EDA's agreement to subordinate its interests to those of Bank Leumi.

C. May 6, 1983 -- The EDA Regional Office Refuses to Subordinate EDA's Interest To Bank Leumi

On May 6, 1983, Mr. Morris of EDA wrote a letter to Mr. Mariotta stating that EDA would not consent to the proposed subordination agreement in part because payments on EDA's direct loan to Welbilt were still delinquent and payments on the loan guaranteed by EDA were past due. Mr. Morris noted that the proposed transaction was not a simple

substitution of Bank Leumi for Citibank, but called for a substantial modification of the existing arrangements to the detriment of EDA.

At this juncture, the Philadelphia Regional Office of EDA began to negotiate directly with Bank Leumi concerning the proposed Welbilt loan package. On May 19, 1983, Bank Leumi sent the EDA Regional office a letter confirming that it intended to assume the Welbilt obligations to Citibank and to extend a new \$3.5 million working capital line of credit to Welbilt under certain conditions, including a requirement that EDA agree to subordinate its interests in certain collateral.

D. May 20, 1983 -- Mr. Wallach Seeks White House Assistance on EDA Loan Subordination Issue

On May 20, 1983, as Welbilt's concern about the financing package reached a crisis point, Mr. Wallach telephoned Mr. Jenkins at the White House to discuss the EDA loan subordination matter.^{90/} As Mr. Wallach apparently knew,

^{90/} White House telephone records reflected telephone calls from Mr. Wallach to Mr. Jenkins on May 20, 1983. The day before, Thursday, May 19, 1983, Mr. Wallach sent to company officials and others several letters and telexes concerning Welbilt's financial crisis. He had just visited with the Welbilt officers Mariotta, Neuberger, and Moreno on May 18 and expressed concern about perceived financial and management problems at Welbilt. He made some suggestions. In a separate telex sent on May 19, Mr. Wallach told attorneys Howard Squadron and Marshall Cogan that:

Welbilt's continuing need for operating
(Footnote Continued)

Mr. Jenkins had substantial experience in dealing with EDA. On May 20, 1983, Mr. Jenkins told Mr. Wallach that, in order to be of any help, he needed a copy of the relevant EDA internal papers.

On May 23, 1983, in response to Mr. Jenkins' request for information, Mr. Wallach had delivered to Mr. Jenkins a memorandum explaining the problems facing Welbilt.^{91/} The memorandum informed Mr. Jenkins about Welbilt's cash flow crisis, and stated that Mr. Wallach had been told that: "On Monday, May 23, the Philadelphia Office will 'sign off' on the agreement and forward it to Washington for final approval by the Office of the Secretary of Commerce. Normally it would go

(Footnote Continued)

capital has grown acute We do not mean to impose but the opportunity to benefit friends all around does seem to exist, if the interest is there.

In this telex and earlier letters, Mr. Wallach sought to interest others in investing in Welbilt.

^{91/} Mr. Wallach telecopied a draft of his letter of May 23, 1983, to Ms. Deborah "Scotty" Scott (Mario Moreno's secretary at Welbilt) with instructions that she should "type [it] on white paper without letterhead, with no addressee and no signature, just the text." He also provided specific instructions for hand delivery to Mr. Jenkins at the White House. The memorandum was prepared in accordance with Mr. Wallach's instructions; neither Mr. Wallach nor Welbilt was identified in the memorandum as the source of the information.

to Carlos Campbell, but it must eventually go to the Secretary."92/

When Mr. Jenkins had requested the "EDA papers" from Mr. Wallach three days earlier, however, he had in mind the actual loan documentation. He therefore viewed Wallach's memorandum as not responsive.93/

Also on May 23, 1983, Mr. Nofziger's partner, Mr. Bragg, telephoned Mr. Campbell about the same issue. On Thursday, May 26, 1983, Mr. Bragg again called Mr. Campbell, apparently to attempt to persuade him to approve the subordination agreement as soon as possible.

Mr. Wallach's description of the situation to Mr. Jenkins was overly optimistic. The Philadelphia Regional

92/ Mr. Wallach's statements reflected his misunderstanding of the review process at the Department of Commerce. The final decision on the agreement would be by Mr. Campbell, not Secretary Baldrige. However, Wallach's reference to the "normal" routing of EDA agreements is the first documented indication that thought was being given to circumventing the routine procedures and going directly to the Secretary of Commerce for approval.

93/ Mr. Jenkins wrote the following note on Mr. Wallach's memorandum of May 23, 1983:

Welbilt File - I told Wallach on the 20th
that I must have a copy of the EDA papers!

In an interview with the office of independent counsel, Mr. Jenkins informed investigators that the papers that he had requested of Wallach were the technical, legal EDA forms and contracts.

Office had not indicated that it would "sign off" on a subordination agreement with Welbilt.

On May 27, 1983, Craig M. Smith, the Regional Director of the EDA's Philadelphia Regional Office, informed Mr. Mariotta that constructive progress had been made on changing the initial proposal that EDA had denied on May 6, 1983. However, major issues still remained to be resolved, including: (1) Welbilt's continued delinquency on its EDA loan; (2) flaws in the cash flow projections provided by Welbilt to EDA on May 23, 1983; and (3) the matter of compensation to EDA for subordinating its interests under the terms of the existing loans. As to the last point, it was EDA policy, espoused by Mr. Campbell, that EDA receive adequate consideration for whatever it gave its private sector "clients." Mr. Smith also noted in his letter that the loan amendment process within EDA normally took several weeks; the processing of Welbilt's request thus could not be completed in the few days apparently requested by Welbilt.

E. May 27, 1983 -- EDA Loan Papers are Transmitted to Washington, D.C. From EDA's Philadelphia Regional Office

On the same day, May 27, 1983, Mr. Morris sent Herbert Stiebel, Director of the EDA Office of Legal Management in Washington, an update on the Welbilt situation. He noted the same problems with the loan subordination arrangement previously expressed to Welbilt. Prominent among them

were Welbilt's delinquency on its loan and the lack of a quid pro quo for EDA for its agreement to subordinate its interests. Mr. Morris stated that Welbilt and its Congressional representatives were claiming that, if EDA did not consent quickly to the new arrangement, the company might be forced into bankruptcy. Although officials from EDA-Philadelphia continued to assist in negotiations, with this letter the processing of the EDA loan subordination request officially moved from Philadelphia to Washington.

F. June 1, 1983 -- Mr. Wallach Calls Mr. Meese's Deputy About the Welbilt/EDA Subordination Matter

On June 1, 1983, Mr. Wallach called Mr. Jenkins about Welbilt. The message Mr. Jenkins received was: "he is waiting for a response -- everything is in place. ?????." On the same day, Mr. Nofziger telephoned Mr. Campbell. Mr. Nofziger called again the following day, Thursday, June 2, and asked Mr. Campbell to speak with Harold Morrison at Bank Leumi's Commercial Finance Department. Mr. Nofziger told Mr. Campbell that Welbilt was facing a deadline in its negotiations with Bank Leumi, and that Mr. Campbell had to speak with Bank Leumi or the deal might fall apart. That same day, Thursday, June 2, Mr. Wallach again called Mr. Jenkins. On Friday June 3, 1983, Mr. Campbell called Mr. Morrison at Bank Leumi and was informed that there was no "deadline."

The following Monday, June 6, Mr. Wallach met with Mr. Jenkins at the White House. Mr. Jenkins could not recall exactly what happened at the meeting. Mr. Wallach at some point, possibly at the Monday meeting, provided Mr. Jenkins with various materials concerning the subordination proposal, and also informed Mr. Jenkins that the company was seriously concerned that it would not be able to meet its payroll obligations the following Friday, June 10, 1983.

G. June 7, 1983 -- Welbilt/EDA Crisis is Discussed at Mr. Meese's Regular Morning Staff Meeting and Mr. Wallach Provides Mr. Meese's Office with More Information About the Matter

Mr. Meese's notes from the early morning White House staff meeting on Tuesday, June 7, 1983, reflected an item under "JEJ et al." - "Welbilt (cf)." According to Mr. Jenkins, this entry meant that Mr. Fuller was scheduled to raise the subject of Welbilt at the regular morning staff meeting. A check mark next to the notes indicated that the matter was discussed as planned, although neither Mr. Meese nor Mr. Jenkins could recall the discussion.

Later that day, Mr. Wallach dictated financial data on Welbilt over the telephone to Mr. Jenkins' secretary.^{94/}

^{94/} Mr. Jenkins' telephone log reflects that Mr. Wallach called him twice on June 7, 1983. Mr. Jenkins also informed the independent counsel that Mr. Wallach appeared unannounced
(Footnote Continued)

The financial data included a comparison of the company's gross income for the first quarter of 1982 and the first quarter of 1983 (\$4.5 million for the first quarter in 1982 and \$8.8 million for the first quarter of 1983.) The telephone message from Mr. Wallach to "Jim" (Mr. Jenkins) ended with a message from Mr. Wallach that "[a]ll done without cash. No risque [sic] to EDA even if subordinator.[sic]"

Also on June 7, 1983, possibly as a follow-up to the discussion in Mr. Meese's morning staff meeting, Mr. Jenkins provided Mr. Fuller with Mr. Wallach's information about Welbilt and its current cash crisis. He asked Mr. Fuller whether any action could be taken on Welbilt's behalf.

Mr. Fuller recalled that Mr. Jenkins pressed for a timely resolution of the EDA matter. Mr. Jenkins urged that the White House contact the Department of Commerce to suggest that the Welbilt proposal be reviewed on an expedited basis. On Tuesday, June 7, 1983, the day of the staff meeting and the Wallach telephone calls discussed above, Mr. Fuller wrote the

(Footnote Continued)

in his office, probably in June of 1983. Mr. Wallach asked Mr. Jenkins to take action in connection with the EDA loan subordination problem. According to Mr. Jenkins, he refused to do anything, whereupon Mr. Wallach left Mr. Jenkins' office to speak to Mr. Meese. Mr. Jenkins also went to Mr. Meese's office. Mr. Wallach told Mr. Meese about the EDA problems. Mr. Jenkins had the impression that this was the first time that Mr. Meese had heard of the problem. According to Mr. Jenkins, Mr. Meese did not say much in response to Mr. Wallach's statements.

following memorandum to Mr. Fielding, Counsel to the President:

This morning, Jim Jenkins provided me with the attached information about Welbilt. EDA is considering a loan to Welbilt and has requested additional information before it can process a loan. Welbilt, by its letter of June 3, 1983 which is attached, has attempted to provide EDA with the information requested and is now waiting for a decision by EDA.

According to Jim Jenkins, Welbilt needs a decision by this Friday or it may not have sufficient funds to meet its payroll obligations.

Welbilt has been an important and positive development in Bronx, New York and has attracted the interest and support of the community and the administration; however, I do not believe that my office can appropriately intervene in the EDA determination.

Is it possible to communicate to the Counsel's office at the Department of Commerce and suggest that the Welbilt project be reviewed on an expedited basis to insure that Welbilt has a decision, one way or another, by the end of the week.

My office will take no independent action. Please let me know if some action can be taken to hasten the process at EDA.

Thank you. [Emphasis in the original]

H. June 8, 1983 -- The White House Counsel to The President Advises Mr. Meese's Office Against Any Contacts With Department of Commerce About Welbilt EDA Crisis

Mr. Fuller's request was handled initially by John G. Roberts, Jr., Associate Counsel to the President. Mr. Roberts wrote a memorandum to Mr. Fielding the next day, Wednesday, June 8, 1983, explaining Mr. Fuller's concerns and

listing the options available to the White House. Mr. Roberts told Mr. Fielding that the most that could appropriately be done by the White House would be to advise EDA, through the General Counsel at the Department of Commerce, that Welbilt needed a decision by Friday, June 10, 1983:

We should not, of course, attempt to persuade EDA concerning the merits of Welbilt's application. Nor should we urge EDA to expedite processing of Welbilt's request. Welbilt has made the urgency of its request known to EDA, and EDA can evaluate that urgency pursuant to its usual procedures and criteria. The most that we can appropriately do is advise EDA, through Commerce, that Welbilt has told the White House that it must have a decision by Friday, and EDA can do with that information whatever is appropriate. Since EDA already knows time is of the essence, nothing will be served by such White House action, and the action could easily be misinterpreted by Commerce and EDA, and misperceived by others, as White House pressure on the merits of the loan or the merits of the expedition request. Accordingly, I recommend no action, and have prepared a memorandum to Fuller so advising him.

Mr. Fielding responded to Mr. Fuller by memorandum dated Wednesday, June 8, 1983. Mr. Fielding made it plain that he believed intervention by the White House would be inappropriate:

The most we could do would be to communicate Welbilt's concerns to EDA, but it is my understanding that Welbilt has already made clear to EDA the need for expedited consideration. Any communication from the White House could thus be misinterpreted by EDA and/or misperceived by the public as untoward

and inappropriate interference, either on the loan decision or the decision to expedite, both of which are EDA's to make.

Mr. Fuller adhered to the advice of White House Counsel. His Office of Cabinet Affairs did not make any contacts at the Department of Commerce on this matter.

On the day that Mr. Fuller received this response from Mr. Fielding, June 8, 1983, Mr. Wallach called Mr. Jenkins and left a message saying "if you have nothing to report, don't call back."

Mr. Jenkins did not recall making any telephone calls to the Department of Commerce on the EDA subordination matter.^{95/} Mr. Jenkins testified before the grand jury that
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^{95/} He recalled that Mr. Wallach asked him to contact Helen W. Robbins, Commerce Secretary Malcolm Baldrige's chief of staff, and also recalled knowing that she had authority to move the EDA matter from Philadelphia to Washington, D.C., but he did not recall speaking with her about this matter. Nor did Ms. Robbins recall receiving any telephone calls from Mr. Jenkins about the EDA matter. Ms. Robbins did recall receiving a number of inquiries from Mr. Bragg. Ms. Robbins initiated a number of calls and contacts within the Department of Commerce to monitor the progress and status of the Welbilt EDA subordination matter.

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On June 8, 1983, the EDA Philadelphia office provided the Washington, D.C. office with an update on the Welbilt matter. The letter stated that despite "very frequent phone calls" with Welbilt on the matter, the larger issues remained unresolved. Notably, Welbilt's loan payments were still delinquent.^{96/}

Mr. Jenkins' June 9, 1983 telephone log reflected a message from Mr. Wallach: "He is in a state of panic." That same day both Helen W. Robbins, Secretary Baldrige's chief of staff, and Mr. Bragg called Mr. Campbell to inquire about the status of the Welbilt matter.

On June 10, 1983, according to Mr. Campbell's telephone log, SBA Administrator Sanders called Mr. Campbell concerning a scheduled meeting in New York about the proposed EDA subordination agreement. The meeting was to be held at the SBA offices in New York City, and the attendees were to include representatives of EDA, the SBA, Bank Leumi and Welbilt. Mr. Bragg also called Mr. Campbell and confirmed that Mr. Campbell would have no objection if Mr. Bragg attended that meeting.

^{96/} Welbilt was four months delinquent on its direct loan and two months past due on the EDA-guaranteed Citibank loan.

Mr. Wallach's appointment book for Saturday, June 11, 1983, reflected an 11:00 a.m. meeting with Mr. Meese.

I. June 16, 1983 -- EDA Meeting in New York
 City with Welbilt and Bank Leumi --
 Resolution of the Problem is Proposed

The scheduled EDA meeting took place on Thursday, June 16, 1983, in New York. Representatives of the EDA (both the Philadelphia and Washington offices), the SBA, Bank Leumi, and Welbilt (including Mr. Bragg, Mr. Squadron, and officers of the company) attended the meeting. The attendees worked toward developing terms of a subordination agreement acceptable to all parties. Welbilt's "imminent bankruptcy" was mentioned, along with its minority status and previous government assistance, as reasons for working out an agreement.

Mr. Geraghty of EDA stated that, prior to the meeting, he thought the SBA and EDA would present a "united front" in negotiating with Welbilt. In his view, the SBA had interests similar to those of EDA, because Welbilt's loan payments to both agencies were delinquent. Mr. Geraghty was surprised to find that Peter P. Neglia, New York Regional Director of the SBA, strongly urged EDA to approve the subordination agreement. Theresa B. Leavitt, the EDA attorney present at the meeting, reported that the terms advocated by the SBA were favorable to the SBA and not ideal for EDA.

Letters dated June 17, 1983, from the EDA Philadelphia Regional Office to EDA Headquarters in Washington, D.C.,

and from Welbilt to the Philadelphia Regional Office, described the June 16 negotiations. Apparently the parties left the meeting with the understanding that Welbilt wanted to close the loan transactions with Bank Leumi on June 30, 1983 (the loan closing date was later postponed); that they wanted a \$3.5 million working capital line of credit; and that they wanted Bank Leumi to take over from Citibank three loans that were guaranteed by EDA. Further, Welbilt and Bank Leumi wanted to secure the new line of credit with first priority liens on all Welbilt's capital. Finally, Welbilt promised to bring all of its loan payments current by the time of closing.

After the June 17, 1983 meeting, Mr. Squadron informed the EDA Philadelphia office that Welbilt would agree to prepay the EDA loans when the company went public later in the summer. Mr. Geraghty gave his views to Mr. Campbell, who made calls to Mr. Geraghty sometimes at home to be kept informed of the progress of the matter.

On June 22, 1983, Mr. Wallach's appointment book and Mr. Meese's calendar reflected a 5:30 p.m. meeting between the two, and Mr. Wallach's appointment book reflected a 6:00 p.m. meeting for Thursday, June 23, 1983, with Mr. Meese. Mr. Wallach also called Mr. Meese on Monday, June 27, 1983.

On June 28, 1983, Mr. Smith, the Director of the Philadelphia Regional EDA Office, received from his staff a routine monthly report. Among the items covered was the June 13, 1983 meeting concerning Welbilt. The report stated:

"A new amendment will be written and sent to Headquarters for review this month."

On Friday, July 8, 1983, Paul W. Bateman, the Acting Deputy Assistant Secretary for Economic Development, prepared a memorandum for Mr. Campbell. Mr. Bateman, who had been covering EDA matters while Mr. Campbell was out of the country,^{97/} noted that "the Welbilt loan guarantee modification matter heated up this week, with all the parties in New York being anxious to close the deal." According to Mr. Bateman, Mr. Geraghty was not satisfied that the deal was ready for approval. Mr. Bateman had gone to New York on that same day to try to resolve the remaining problems.

Mr. Bateman's memorandum to Mr. Campbell stated that Ms. Robbins called on July 8, 1983, to ensure that Mr. Bateman had the authority to approve the amendment if its terms were agreed upon before Mr. Campbell returned from his trip. Ms. Robbins did not recall talking with Mr. Bateman about this matter. She stated, however, that Mr. Bragg called her about the EDA matter with some frequency and that she talked with Mr. Campbell at some point to ensure that the matter was being dealt with as expeditiously as possible.

^{97/} Mr. Campbell was out of the country on official business between June 30 and July 10, 1983.

Ms. Robbins had no recollection of ever talking with Mr. Wallach on this or any subject.

J. July 14, 1983 -- EDA Philadelphia Regional Office Sends EDA Subordination Papers to Washington, D.C. and Messrs. Wallach and Bragg Lobby the White House and the Department of Commerce

On July 14, 1983, the EDA Philadelphia Regional Office recommended to EDA-Washington that the modification as then negotiated be approved. Among other things, EDA would be agreeing to subordinate its interests to the Bank Leumi loans. On that same day, Mr. Bragg called Mr. Campbell to try to hasten EDA's decision.

Mr. Campbell later prepared for his own file a chronology of events in connection with the Welbilt-EDA subordination matter. His written recollection of the July 14, 1983 phone call from Mr. Bragg was as follows:

Mark Bragg calls to try to pressue [sic] me into an expedient approval of the Wellbuilt [sic], Inc. modification request. Dale Randall, Deputy Assistant Secretary of EDA for Finance is in my office and witnesses the verbal altercation between me and Bragg. I am adamant in insisting that the EDA Chief Counsel approve the legalities and that the financial staff ascertain the validity of the required "quid pro quo" before acting. Mr. Bragg does not appear sensitive to the importance of the procedures and is trying to force me to act prematurely. After he yells and threatens me I essentiall [sic] tell him to get off my back. He apparently calls the White House to try to exercise political influence.

Mr. Bragg could not understand why Mr. Campbell was refusing to approve an agreement that would result in the EDA loans being paid off. According to Mr. Campbell and other EDA officials, however, Welbilt's financial viability was far from certain. In their view, the success of the planned public offering could not be relied upon, and subsequent repayment of the EDA loans from offering proceeds was therefore questionable.

Mr. Jenkins' telephone log showed that he also received a telephone call from Mr. Bragg on July 14, 1983. Mr. Bragg's message to Mr. Jenkins stated that the EDA deal was "ready to go," and asked Mr. Jenkins to call Mr. Geraghty. Mr. Jenkins informed the office of independent counsel that he did not know who Mr. Geraghty was and did not telephone him. Likewise, Mr. Geraghty did not know who Mr. Jenkins was and never received a telephone call from him. Mr. Jenkins' telephone log also shows that he received a call from Mr. Wallach on July 14, 1983.^{98/}

^{98/} Mr. Jenkins recalled [

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Mr. Jenkins testified [**GRAND JURY MATERIAL DELETED**]
(Footnote Continued)

K. July 14, 1983 -- Welbilt Officer Moreno Flies To Washington, D.C. to Meet with Mr. Wallach In Advance of a White House Meeting with Mr. Meese

Mr. Moreno, then Vice President of Welbilt, reported to the independent counsel that, by July 1983, Welbilt was desperate to obtain EDA's agreement to subordinate its interests to the proposed Bank Leumi loans. The Welbilt officers were under the impression that Mr. Campbell was their nemesis and that he would refuse to subordinate EDA's interests. As Mr. Moreno put it, Welbilt used every "Tom, Dick and Harry" to try to persuade Mr. Campbell to agree to the subordination. Finally they explored the possibility of having Mr. Campbell "superseded" by having another Assistant Secretary act in his place. To that end they sought Mr. Wallach's assistance.

Mr. Guariglia recounted to the independent counsel his recollection of the events of July 14 and 15, 1983. He recalled that during the evening of Thursday, July 14, 1983, the company officers were celebrating Mr. Neuberger's birthday with a party at their corporate offices, when they were

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informed that Mr. Campbell refused to approve the subordination agreement sent to his office that day.

It was decided on the spot that Mr. Moreno would fly to Washington, D.C., and immediately make arrangements through the company's Washington contacts to exert White House pressure on the Department of Commerce. Mr. Guariglia recalled that Mr. Moreno's trip to Washington was so hastily planned that Mr. Moreno did not have time to get a change of clothes. Mr. Guariglia lent Mr. Moreno \$500 in cash and his credit cards so that Mr. Moreno could fly to Washington that night without delay.

Later that night, Mr. Moreno telephoned back to corporate headquarters from Washington between 10 and 11 p.m. and reported that arrangements had been made to "get into the White House" the next day. We were "in the White House," Mr. Guariglia recalled thinking with relief.

**L. July 15, 1983 - Mr. Wallach Meets with
Mr. Moreno, then Attends a Breakfast
Meeting at the White House with Mr. Meese**

Mr. Moreno recalled spending the night of July 14, 1983, across from the White House at the Hay-Adams Hotel. He made arrangements to meet Mr. Wallach early the next morning, Friday, July 15, 1983, in Lafayette Park between the hotel and the White House. Mr. Wallach met with Mr. Moreno at the appointed hour. As they walked across the park toward the White House, they spoke of the urgent need for the Department

of Commerce to agree to subordinate the EDA loans and of the obstacle interposed by Mr. Campbell's refusal to agree.

Leaving Mr. Moreno, Mr. Wallach hurried to an appointment at the White House with Mr. Meese.

The independent counsel has concluded that Mr. Wallach discussed the EDA subordination issue with Mr. Meese at this time. Mr. Meese's calendar entry reflected that he had breakfast at the White House with Mr. Wallach at 7:15 a.m. on July 15, 1983. Mr. Meese testified that he was certain Mr. Wallach talked to him about the EDA matter sometime during this period, but he could not recall specifically what was discussed. Mr. Wallach's testimony on this matter is unavailable because he has invoked his fifth amendment privilege against self-incrimination.

M. July 15, 1983 - Mr. Meese Contacts Commerce Secretary Malcolm Baldrige at Mr. Wallach's Request Concerning Welbilt EDA Subordination Issue

Upon leaving his White House meeting with Mr. Meese, Mr. Wallach reported to Mr. Moreno that, while Mr. Wallach was in the White House that morning, "a call had to be placed to Baldrige who was in the shower."

Mr. Moreno told the office of independent counsel that, according to Mr. Wallach, Mr. Meese asked Secretary Baldrige whether he could sign off on the Welbilt EDA subordination issue. Secretary Baldrige reportedly indicated to Mr. Meese that such a move would be too political and,

instead, Secretary Baldrige would determine whether another Assistant Secretary could approve the subordination agreement.^{99/}

Mr. Meese did not recall telephoning Secretary Baldrige that early in the morning, nor getting him out of the shower.^{100/} However, a notation made by Mr. Meese reflected that Secretary Baldrige telephoned Mr. Meese later that same day, apparently in response to an earlier telephone call from Mr. Meese. The note in Mr. Meese's handwriting says "Welbilt, Peo coming in Mon 18 July -- want to do it! Israeli Co. Qs."

At the time of Mr. Meese's conversation with Secretary Baldrige, there was a meeting scheduled with Welbilt representatives at EDA for the following week. One of the outstanding issues was Wedtech's apparent violation of one of

^{99/} Later, Mr. Moreno and Mr. Guariglia were told by Mr. Wallach that, after Secretary Baldrige looked into the matter, he determined that Mr. Campbell was the only appropriate official to handle the EDA subordination issue, and accordingly, that Secretary Baldrige would not reassign the matter or handle it himself.

^{100/} Mrs. Margaret Baldrige, Secretary Baldrige's widow, informed the office of independent counsel that she did not know of any telephone call at home to Secretary Baldrige specifically about Welbilt. However, it was not unusual for him to receive work-related calls at home, and she "would have summoned him from the tub" had there been a telephone call from Mr. Meese.

the terms of the EDA loan agreement as a result of Welbilt's purchase of Karmo Industries, an Israeli corporation.

Mr. Meese did not specifically recollect this discussion with Secretary Baldrige. However, he acknowledged that his notes indicate that Secretary Baldrige telephoned him, apparently in response to a previous inquiry from Mr. Meese, and informed him of the status of the Welbilt matter at the Department of Commerce.^{101/}

Ms. Robbins did not know of any telephone conversation between Secretary Baldrige and Mr. Meese about Welbilt. She did not believe Secretary Baldrige was ever involved in the Welbilt matter. She stated, however, that Mr. Meese would call Secretary Baldrige directly, so she would not necessarily know the substance of their conversations. She also stated that "it would be very out of the ordinary for Ed Meese to call about an EDA loan."

Mr. Bragg called Mr. Jenkins on July 15, 1983. At 6:10 p.m. that day, Mr. Wallach called Mr. Meese, leaving a message that "it's quite important." There is no evidence that Mr. Wallach was discussing with Mr. Meese any matter of

^{101/} The independent counsel did not interview Secretary Baldrige about this matter before his untimely death in July 1987. Mrs. Baldrige did not recall any discussion with her husband about Welbilt at any time.

importance at this time other than Welbilt's serious problems with EDA.

**N. July 18, 1983 - Commerce Department
Associate General Counsel is Detailed to
Attend Meeting at the Request of Secretary
Baldrige's Office**

Mr. Wallach's appointment book and Mr. Meese's calendar both reflected a meeting of the two men at 11:00 a.m. on Saturday, July 16, 1983. On Monday, July 18, 1983, Mr. Wallach called Mr. Meese. Mr. Meese had no recollection of the substance of the meeting or of the telephone call.

Evidence indicates that either on Friday, July 15 or early on Monday, July 18, 1983, Ms. Robbins contacted either Sherman E. Unger, General Counsel of the Department of Commerce, or Irving P. Margulies, Deputy General Counsel, about the Welbilt matter.^{102/} Ms. Robbins did not specifically recall this contact; she recalled that Mr. Bragg telephoned her a number of times to complain about Mr. Campbell's position on the Welbilt matter. She said her telephone call to the General Counsel's Office therefore may have been prompted by Mr. Bragg. She had no recollection of any involvement or request by Secretary Baldrige relating to the matter.

^{102/} On July 18, Mr. Campbell telephoned Ms. Robbins to inform her of the status of the Welbilt matter.

Mr. Bragg's recollection differed somewhat from that of Ms. Robbins. He thought Ms. Robbins "may have told [Mr. Bragg] at some point that the Secretary had at least called [Mr. Campbell] if not had [Mr. Campbell] come to see him." Mr. Bragg believed that Secretary Baldrige was aware of the Welbilt/EDA subordination issue.

In response to Ms. Robbins' request, Mr. Margulies asked Robert H. Brumley, a new Associate General Counsel, to attend the Welbilt meeting scheduled to be held at EDA on the next day, July 19, 1983. Mr. Margulies said that he instructed Mr. Brumley to "get the loan made or tell me why it can't be made." Mr. Brumley stated that his understanding of his assignment was to "keep an eye on things, to ensure that nothing unusual or inappropriate" happened. Mr. Margulies stated that he was absolutely certain that he was not contacted about Welbilt by Secretary Baldrige, by Mr. Meese or by Mr. Nofziger.

**O. July 19, 1983 - Department of Commerce Hosts
Welbilt/EDA Subordination Meeting Presided
Over by Assistant Secretary Campbell**

Mr. Brumley's notes for the July 19, 1983 meeting reflected the attendance of Messrs. Nofziger, Bragg, Squadron (acting as counsel to Welbilt), C. Dale Randall (Deputy Assistant Secretary for Economic Development), Mr. Mariotta, and Assistant Secretary Campbell, among others. The meeting took place in the EDA conference room.

At the meeting, Mr. Squadron presented what Mr. Brumley termed a convincing argument why the loan subordination agreement should be approved. Mr. Randall spoke of EDA's concerns regarding the subordination proposal: principally, EDA was uncomfortable with Welbilt's past record of delinquency. The Israeli company question, which had been discussed briefly between Secretary Baldrige and Mr. Meese in their July 15, 1983 conversation, was also discussed.

Mr. Squadron explained that the arrangement Welbilt had with Karmo Industries was a great opportunity for Welbilt, because the Israeli company was a source for manufactured components essential to Welbilt's Department of Defense contracts. He argued that Welbilt needed financing to sustain the company until the completion of its defense contracts. The Bank Leumi loan package would carry Welbilt through March 1984. Mr. Squadron emphasized that EDA would be better secured under the proposed deal than it had been in 1980 because EDA would be repaid in full from the proceeds of the imminent public offering.

Mr. Brumley's notes showed that Mr. Campbell argued against Mr. Squadron's assertions. Mr. Campbell said that Welbilt should examine its cost control system, which he felt needed improvement. He also said that the company needed to establish an independent Board of Directors to strengthen its management expertise and to take action to prevent its EDA loan from being declared in default. Mr. Campbell listened to

Welbilt's arguments about the difficulties of dealing with the Department of Defense contracts, but said that the solution to those problems was outside of EDA's area of responsibility.

The perspective of some observers at the meeting, including Mr. Brumley, was that Mr. Campbell's approach to the proposed agreement was reasonable. Welbilt had severe financial difficulties and a bad loan history with EDA. Despite Welbilt's poor record, EDA was trying in good faith to work toward a solution of the problems surrounding the proposed subordination agreement. It was the view of the Welbilt officials, on the other hand, that Mr. Campbell blocked the successful conclusion of the financing arrangements; they believed that EDA's Philadelphia Regional Office had approved the loan, and that Mr. Campbell was being unduly obstructive.

Mr. Campbell confirmed that he was under a great deal of pressure concerning this matter. He recalled that he received an unusual number of telephone calls about it, and that circumstances surrounding it were unusually unpleasant. Mr. Campbell complained in particular of the lobbying tactics of Mr. Bragg, who, in Mr. Campbell's words, "kept beating us over the head." He stated to the independent counsel and publicly that he was hounded out of office partly because of what he regarded as a misperception of his role in this matter. Nevertheless, according to both Mr. Campbell and Mr. Geraghty, the deal "sprouted wings" after the July 19,

1983 meeting. Mr. Campbell stated that as soon as an arrangement could be worked out, he wanted the transaction completed. After the July 19 meeting, he decided to approve the general terms negotiated at that time. According to Mr. Campbell, as a result of, and "definitely" in response to, the political pressure on him, the final agreement was reached in "lightning fast" time.

P. July 27, 1983 -- Bank Leumi Loan Closes
With EDA Agreeing to Subordinate

On July 20, 1983, the day following the July 19 meeting, Mr. Campbell instructed Mr. Randall to draft a memorandum to Secretary Baldrige about the transaction. Mr. Campbell explained tht it was unusual for him to supply Secretary Baldrige with such a status report; he believed that Ms. Robbins had asked him for it. With the memorandum, Mr. Campbell kept Secretary Baldrige's office informed of the progress of the negotiations. However, he told the office of independent counsel that he never spoke with Secretary Baldrige about the Welbilt matter and he received no directions or instructions from Secretary Baldrige.

Mr. Campbell stated that he delivered the memorandum to the Office of the Secretary on July 20, 1983.^{103/} At 7:15

^{103/} Ms. Robbins did not recall this memorandum. She told the office of independent counsel that Mr. Campbell probably
(Footnote Continued)

a.m. on July 21, 1983, Mr. Meese's calendar reflected a meeting with Secretary Baldrige prior to a Cabinet meeting. The Cabinet meeting was listed on the schedules of both Mr. Meese and Secretary Baldrige.

Mr. Meese's telephone log for July 21, 1983, reflected calls from Messrs. Nofziger and Wallach. The same day, Mr. Jenkins also received calls from Messrs. Bragg and Wallach. Mr. Campbell's Weekly Report to Secretary Baldrige dated July 21, 1983, showed that another meeting was scheduled for July 21, 1983, to try to hammer out the final unresolved terms of the subordination agreement. That meeting was held in New York, as scheduled, at Bank Leumi's offices.

On July 22, 1983, Mr. Meese had breakfast with Mr. Wallach. On that same day, both Messrs. Nofziger and Bragg called Mr. Campbell, and Mr. Wallach called Mr. Jenkins. A letter of the same date from Mr. Campbell to Mr. Smith in the EDA Philadelphia Regional Office authorized Mr. Smith to take whatever actions were necessary to complete the approval process for the EDA. Mr. Campbell's letter, which included fairly detailed instructions on changes to specific provisions

(Footnote Continued)

brought it directly to Secretary Baldrige's office, rather than sending it through normal channels. Her reasoning was that there are no notations on the bottom of the memorandum to reflect the normal clearing process.

of the original 1980 agreement, was sent to the Philadelphia EDA office from Washington on July 22, 1983.

On Monday, July 25, 1983, pre-closing began in New York. The meetings were attended by representatives of EDA and Welbilt. Mr. Geraghty described the process as a "never-ending closing" that went on for three days, and he stated that there was a "definite push to get it done." Late on July 27, 1983, or in the early morning hours of July 28, the final papers were signed.

EDA's final decision was to subordinate its interests to those of Bank Leumi in exchange for an agreement to have EDA's loans fully repaid at the time of Welbilt's public offering. This decision was made in an atmosphere of political pressure, which had no apparent impact on the merits of Mr. Campbell's decision but did affect the speed with which the deal was concluded. Mr. Meese's telephone call to Secretary Baldrige may have contributed to that atmosphere of pressure, although it was only part of the lobbying campaign conducted by Welbilt. It is not possible to determine the precise significance of Mr. Meese's intercession.

V. THE WEDTECH PUBLIC OFFERING

A. August 25, 1983 - Wedtech Goes Public

With the EDA issue resolved and the Bank Leumi loan in place, the company's underwriters were now able to proceed

with the planned public offering of Wedtech common stock.^{104/}
On August 25, 1983, Wedtech completed its public offering and simultaneously shed its minority-owned status. This was confirmed in the registration statement filed by the company with the Securities and Exchange Commission. This infusion of capital into the corporation provided Wedtech with the ability it previously lacked to compensate Mr. Wallach pursuant to the agreement reached in principle in late 1982, but never executed.

The public offering price for Wedtech stock was \$16 per share. Calculated at that price, Mr. Wallach's 45,000 shares (1 percent of 4.5 million shares) would have been worth \$720,000. However, their actual market value was difficult to determine as sale of the shares was subject to a two-year sales limitation under SEC regulations.^{105/}

On August 25, 1983, Mr. Wallach purchased with his personal funds 2,777 additional shares of Wedtech common stock at a cost of \$44,432.

^{104/} In June 1983, Welbilt changed its name to Wedtech Corporation. In planning for the public offering, the company had learned that another public corporation bore the name of Welbilt. To avoid lawsuits, company officials adopted a new name. At the same time, Mr. Guariglia was elected President of the corporation.

^{105/} SEC Rule 144, 17 CFR 230.144.

**B. September 7, 1983 - Wallach Receives
\$125,000 and Wedtech "Cooks the Books"**

On September 7, 1983, Wedtech paid Mr. Wallach a lump sum of \$125,000. Mr. Wallach apparently had requested \$150,000; however, because of other company expenses, the Wedtech officers decided to pay him only \$125,000. According to Mr. Guariglia, the Wedtech officers agreed to "cook the books" in recording the Wallach payment and thereby to create a financial picture of the company that was more favorable than the facts warranted.^{106/}

By the fall of 1983, Mr. Wallach clearly had convinced the Wedtech officers of his Washington access and

^{106/} This was accomplished by capitalizing the \$125,000 payment as a debit to paid-in capital or shareholder's equity, rather than charging it as a debit or expense to the company's income statement. In this way, the net income and earnings per share reported by Wedtech on its financial statements were falsely enhanced.

Apparently, it was Mr. Guariglia's idea to "cook the books." He suggested it to Mr. Moreno who in turn asked Mr. Wallach to submit a phony bill for \$125,000 of legal fees supposedly earned by Mr. Wallach for legal work done in connection with the public offering. Mr. Wallach complied on September 7, 1983, by writing Mr. Guariglia to congratulate him on the success of the public offering. He continued "[a]s discussed, my fee for consultation relative to the registration and public offering is \$125,000."

Mr. Guariglia, the Wedtech officer principally in charge of the public offering, told the office of independent counsel that Mr. Wallach was not involved in the registration and public offering on behalf of Wedtech, and that any statement to the contrary by Mr. Wallach was false.

his consequent utility to the company. For a brief period, however, it appeared that, due to the public offering, the company's minority 8(a) Program status was a matter of history and that the company could expect to obtain any new government contracts only through competitive bidding.

VI. PONTOON CONTRACT

A. October 1983 -- Wedtech Decides to Stay in The 8(a) Program to Pursue Department of the Navy Pontoon Contract

Following the public offering, which Wedtech was able to complete because of its subordination agreement with EDA, Wedtech had an abundance of cash. The officers of Wedtech had decided that the company should "graduate" from the SBA 8(a) Program to the competitive market. However, that decision was reversed when they learned in early October 1983, of a contract under the Sealift Support Facilities Program of the United States Navy to manufacture amphibious causeways, also known as pontoons.^{107/} The program was described to them by LAMA as one of the first major defense logistics programs that might be set aside by the SBA under the 8(a) Program. The contract, including options for future production, was

^{107/} The Wedtech officers also learned of another potential 8(a) Program opportunity involving a contract to manufacture 20-horsepower engines for the United States Army. They attempted without success to obtain that contract.

then regarded by Wedtech officer Anthony Guariglia as a potential source of up to \$400 million in pontoon sales.^{108/}

The Wedtech officers were enthusiastic about the prospect of obtaining such a large contract. However, they had already disclosed in connection with the public offering that the company was no longer eligible to participate in the 8(a) Program because Mr. Mariotta, Chairman of the Wedtech Board of Directors, owned only approximately 27 percent of the outstanding common stock as a result of the public offering.^{109/}

**B. Fall of 1983 -- Wedtech Officers Devise
A Scheme to Keep Wedtech Under the 8(a)
Program**

Wedtech's 8(a) Program status expired on October 12, 1983. Immediately before the expiration date, on September 27, 1983, the SBA issued a "bridge" letter which provided Wedtech with an indefinite but temporary extension of its 8(a) Program status. The bridge letter was followed by a letter

^{108/} The pontoons were to be part of the Rapid Deployment Force whereby large Naval supply ships, unable to enter shallow water ports to unload their supplies, would unload them onto the pontoons which would then transport the supplies ashore.

^{109/} The company's prior 8(a) Program status had been based on Mr. Mariotta's 45.5 percent ownership and Mr. Moreno's nine percent ownership, which qualified Wedtech as a minority company.

extending Wedtech's 8(a) Program status until January 16, 1984.

On October 26, 1983, Wedtech sent a memorandum to Mr. Wallach which contained detailed information about the cartoon program, and set forth the following list of required actions:

- o Support from top levels of SBA Central office
- o Support from three SBA RAs - Neglia (NY), Lopez (TX), and Castillo (CA)
- o DAR letter from Neglia to Navy requesting entire Causeway program for 8(a) and proposing the basic approach outlined above
- o Support from Tower, D'Amato, Wilson, Domenici, etc.
- o Wedtech review TDP and identify portions of work for Bronx, Puerto Rico, Texas, and California
- o Wedtech/SBA meet with principals in Puerto Rico, Texas, and California to formulate the basic structure of the co-production program
- o Wedtech/SBA make presentation to Navy on the overall plan and secure go-ahead for technical/price proposals under 8(a) Program.

The Wedtech officers explored ways to "legitimize" Wedtech's minority status by shifting control of the corporation back to Mr. Mariotta. They finally devised the following scheme: On January 4, 1984, it was agreed in writing that certain officers would "sell" to Mr. Mariotta a

sufficient number of shares to give him an apparent majority ownership of Wedtech. Mr. Mariotta would, in return, give promissory notes which would require repayments, beginning after two years, for a period of 10 years. The agreement was premised on a fraudulent oral agreement that Mr. Mariotta would default on his first payment. The default would cause ownership of the stock to revert back to the "sellers." Thus, under this scheme, the stock would effectively be in escrow for two years before being returned to the "sellers." Wedtech would appear on paper to be a minority-owned company, although Mr. Mariotta would not actually own a majority of the stock.

According to Mr. Guariglia, Mr. Wallach was fully informed of this scheme at a meeting at the Helmsley Palace Hotel in New York City on November 7, 1983, and was asked to "sell" some of his stock to Mr. Mariotta. Mr. Wallach expressed concern about enforcement of the oral default agreement because, due to its nature, it could not and would not be put in writing. Mr. Guariglia told the office of independent counsel that Mr. Mariotta gave Mr. Wallach assurances by referring to his original oral contract to give Mr. Wallach \$1 million worth of stock, and saying:[

GRAND JURY MATERIAL DELETED]

Mr. Wallach ultimately declined to enter into the stock transfer and default agreements. According to Mr. Guariglia, Mr. Wallach gave financial need as his reason,

stating that he could not afford to keep his stock in escrow for a period of years.^{110/} In a November 9, 1983 memorandum memorializing the November 7, 1983 meeting, Mr. Wallach stressed that all participants "[desire to] comply with the legal requirements of the SPA [sic] and all other legal requirements involved."

C. January 1984 -- The SBA Permits Wedtech To Remain in the 8(a) Program Due to The Stock Transfer Agreement

On January 4, 1984, Wedtech submitted an application to the SBA for a three-year extension of its 8(a) Program eligibility based on the sham stock transactions between the officers of Wedtech. The New York District Office of the SBA approved the extension on January 4, 1984, the day it was submitted; the New York Regional Office of the SBA approved the request the next day.

The application was submitted to the Washington, D.C. national office of the SBA. On January 25, 1984, the SBA formally extended Wedtech's 8(a) Program status on the basis of the "transfer" arrangement entered into between

^{110/} On December 17, 1985, the participants in the stock transfer agreement rescinded the agreement, as they had planned at the time they entered into the agreement. Meanwhile, on May 24, 1985, Mr. Wallach sold 84 percent of his stock for \$482,709.

Mr. Mariotta and other principal Wedtech officers. On January 30, 1984, after the stock transfer agreement had been approved, the General Counsel of the SBA signed a written opinion that, as a result of the stock transactions between its officers, Wedtech qualified for continued participation in the 8(a) Program.

Between January 25 and January 30, 1984, as described below, the SBA had formally named Wedtech as a contractor eligible for the lucrative Navy pontoon contract.

D. August 1983 to January 6, 1984 -- The Pontoon Contract is Placed in the Section 8(a) Program

Contemporaneously with its efforts to obtain an extension of its 8(a) Program status, Wedtech joined other "8(a)" firms in lobbying the Navy to have the pontoon contract included in the 8(a) Program. By August 1983, Everett A. Pyatt, Acting Assistant Secretary of the Navy for Shipbuilding and Logistics, had determined that the pontoon program would not be set aside under the 8(a) Program. On November 8, 1983, the SBA appealed Mr. Pyatt's decision to Secretary of the Navy John F. Lehman, Jr. On December 8, 1983, Mr. Pyatt offered the SBA the non-powered pontoon portion of the contract, which constituted 12 percent of the entire contract. The SBA continued to seek to have the whole contract designated for the 8(a) Program. Mr. Pyatt finally agreed, on January 6,

1984, to allow the entire contract to be set aside for contractors under the 8(a) Program.^{111/}

E. January 1984 -- Wedtech Is Named as an 8(a) Program Contractor for the Pontoon Contract

In January 1984, the SBA had begun to mention Wedtech to the Navy as one of the companies under consideration for the pontoon contract. On January 20, 1984, the Navy was told by the SBA that Wedtech would be one of the contractors designated by the SBA for the pontoon contract. Wedtech was formally so designated on or before January 30, 1984.

^{111/} Specifically, Mr. Pyatt agreed to "entertain" the set-aside of the entire pontoon contract. That decision, however, resulted in the termination of the competitive bidding process, and effectively shifted the burden to the Navy to demonstrate that an 8(a) Program contractor could not adequately fulfill the contract.

Mr. Guariglia recalled that Mr. Wallach claimed to have assisted Wedtech's pontoon contract efforts by influencing Acting Assistant Secretary Pyatt, presumably through Mr. Meese. At the time that Mr. Pyatt was deciding whether the pontoon contract would be in the 8(a) Program, and whether Wedtech would be a contractor, he was waiting for the White House to nominate him to be the Assistant Secretary of the Navy for Shipbuilding and Logistics. His nomination, which had been held up since June 1983, was released at the time that Wedtech entered into the pontoon contract with the Navy.

Mr. Wallach purportedly informed Mr. Guariglia that Mr. Pyatt's nomination was released in return for Mr. Pyatt's help with the pontoon contract. However, the evidence known to the independent counsel shows that Mr. Pyatt's nomination was first delayed and then released because of a separate controversy which did not involve Wedtech or Mr. Wallach.

**F. January 30, 1984 through April 23, 1984 --
Wedtech Is Named the Sole Contractor for the
Pontoon Contract and Is Awarded the Contract**

In February 1984, Wedtech pursued the goal of being named the sole contractor on the pontoon contract. During that time, Wedtech's only 8(a) Program rival for the contract, Medley Tool and Model Co., was eliminated from consideration. On April 23, 1984, Wedtech publicly announced that the company had been awarded a \$24.2 million pontoon contract. It also announced the possibility of "approximately \$150 million of options" for 1985 and 1986.

**G. November 1983 through December 1984 --
Mr. Wallach Learns of Wedtech's Pontoon
Contract Efforts**

The services performed by Mr. Wallach for Wedtech in the fall of 1983, while the company was attempting to obtain the pontoon contract, cannot be readily discerned. Mr. Wallach corresponded sporadically with Wedtech officials on a new technology, a "coating process," being developed by the company. He also wrote a few memoranda to the file about the status of various company activities. Mr. Guariglia told investigators that Mr. Wallach took credit for Mr. Pyatt's decision to place the entire pontoon contract in the 8(a) Program and Mr. Moreno recalled that he took credit for a telephone call. None of the former Wedtech officers recalled that Mr. Wallach claimed to have performed any other services pertaining to the pontoon contract.

On November 9, 1983, months before Wedtech was awarded the pontoon contract, Mr. Wallach prepared a memorandum to his file which stated: "The contract is to be awarded under 8a of the SPA [sic] Act and Wedtech is the prime potential recipient." The evidence does not reveal Mr. Wallach's source for this prescient observation.

On December 7, 1983, Mr. Wallach wrote a memorandum to his file which summarized the status of the pontoon contract as follows:

I am advised of the following information: Secretary Piot's [sic] office from the Navy with Richard Ramirez writing the letter will issue a letter which will set out qualifications that really apply only to Wedtech. Delivery will be to the east coast first and will include elements of the propulsion as well as the non-propulsion portions of the contract. In other words, it should be terrific.

The answer then is to get a letter back to the SBA specifying Wedtech and apparently Sanders has already decided to do that. If it goes as scheduled, we should have the contract by the end of the year. We will see.

Again, the evidence does not indicate the source for Mr. Wallach's accurate prediction.

In a December 22, 1983 memorandum, Mr. Wallach expressed to Wedtech officials his disappointment with the lack of progress with respect to the pontoon contract award. The memorandum attributed Wedtech's pontoon contract efforts up until that time to Mr. Bragg and "Len," an apparently

misspelled reference to Mr. Nofziger. The memorandum also indicated that Mr. Wallach was initiating efforts, which were unexplained, to obtain assistance for Wedtech.112/

**H. January to October 1984 -- Alleged and Known
Contacts and Communications by Mr. Wallach
With Mr. Meese Concerning the Pontoon
Contract**

Mr. Moreno described to the office of independent counsel a telephone call that Mr. Wallach claimed to have made to Mr. Meese concerning the pontoon contract. According to Mr. Moreno, Mr. Wallach spoke to Mr. Meese a few days before January 6, 1984, the day the entire pontoon contract was included in the Section 8(a) Program. Mr. Wallach told Mr. Moreno that he asked Mr. Meese to intervene in the contract award procedures, presumably with Secretary of Defense Caspar W. Weinberger. It was Mr. Moreno's recollection that the purported telephone call to Mr. Meese occurred at a time when the Navy was considering whether the entire pontoon contract, or only the "non-motorized" portion, would be set aside under the 8(a) Program.113/ Mr. Wallach's

112/ Mr. Wallach gave an interview to a Senator and staff members of the Committee on Governmental Affairs of the United States Senate on June 29, 1987. At that interview, he asserted that he learned information recorded in his memoranda from the Wedtech officers and their consultants, including Mr. Bragg.

113/ The Navy had that question under consideration between December 8, 1983 and January 6, 1984.

alleged statement to Mr. Moreno is the only indication known to the office of independent counsel that any such communication occurred between Mr. Wallach and Mr. Meese.

On January 27, 1984, Mr. Wallach wrote Mr. Meese a six-page letter about the pontoon contract, as well as about a 20-horsepower engine contract with the Army. Mr. Wallach's memorandum set forth details about the pontoon contract. Mr. Wallach had previously included the same information in his file memoranda of November and December 1983.

Mr. Wallach also told Mr. Meese of the Navy's decision to include the contract in the 8(a) Program. He noted that a minority-owned company in Philadelphia, Medley Tool & Model Co., had belatedly appeared to compete with Wedtech for the pontoon contract. Mr. Wallach ended the memorandum by telling Mr. Meese that "[a]s of the writing of this memo, no final decision has been made, but it is supposed to be made by the SBA no later than Friday, January 27."

At this time, as discussed above, Wedtech had nearly completed its successful campaign to be named as a contractor for the pontoon contract. The final designation of Wedtech as an 8(a) Program contractor occurred on or shortly before Monday, January 30, 1984.

Mr. Meese told the office of independent counsel that he had no specific recollection of receiving the January 27, 1984 memorandum. Mr. Meese further stated that he had no

recollection of ever taking any action to assist Wedtech with the pontoon contract.

On October 18, 1984, Mr. Wallach wrote a one-page memorandum to Mr. Meese in which he suggested that Mr. Meese "make an appropriate campaign stop" at Wedtech during the week before the 1984 national election to attend the christening of the first pontoon. Although Mr. Wallach's files show ongoing involvement with Wedtech's efforts to obtain the pontoon contract options in the fall of 1984, this memorandum is the only known communication between Mr. Wallach and Mr. Meese about the pontoon contract during that period.

I. Wedtech Fails to Deliver the Pontoons on Schedule

Wedtech's performance under the pontoon contract was less than satisfactory. Deadlines were not met. By July 25, 1984, the Navy's Program Manager, Captain David C. de Vicq, was demanding that Wedtech provide the Navy with specific reassurance of its ability to meet production deadlines.

Wedtech failed to deliver the first pontoon on the October 29, 1984 scheduled delivery date. During this time period, Mr. Wallach noted for his files that Captain de Vicq was one of the sources of Wedtech's problems with the Navy. On November 10, 1984, in response to a Navy evaluation expressing continued confidence in Wedtech, Captain de Vicq informed Assistant Secretary Pyatt of his concerns about Wedtech's inability to deliver pontoons.

Contemporaneously with its efforts to meet the deadlines for delivery of pontoons, Wedtech turned its attention towards obtaining options for the continued production of pontoons, first for 1985 and then for 1986. Although Wedtech officers were pleased to obtain the pontoon contract, the expectation was that Wedtech would lose money on the initial contract. It was anticipated, however, that the losses would be more than recouped if Wedtech were awarded the 1985 and 1986 options.

On November 12, 1984, two days after Captain de Vicq's complaint to Assistant Secretary Pyatt, Mr. Wallach sent a memorandum to the Wedtech officers in which he suggested "a private meeting with Captain D." in connection with the ongoing efforts of Wedtech to obtain the 1985 pontoon contract option. Mr. Wallach suggested that:

A subtle but explicit statement to him of the circumstances which produced the criticism of the purchasing contract should be disclosed to him. It should be done in a way which indicates that you are thoroughly aware of the fact that you could have done it in other ways, with much more volatility, but chose not to do so. Generally speaking, indicating to him that you both have the same ends in mind (as Fred indicated), and hopefully with its implicit suggestion that if he wants his record to look good, obtain a promotion, etc., that by working with you, and your working with him, that is the most efficient way to achieve everyone's common goal.

He should be aware of Wedtech's general ally structure. He doesn't have to know it in detail. The fact that we have it, and his awareness of it, ought to be gently indicated

so that he understands that we will view favorably with all we know, his efforts to legitimately conclude this agreement and fulfill the Navy's responsibilities to the public.

The independent counsel is aware of no evidence that the proposed conversation with Captain de Vicq ever took place.

J. September 1985 -- Mr. Meese Meets the Wedtech Officers At a Social Event

With the possible exception of one conversation at a social event, which is discussed below, there is no indication of any known contact between Mr. Meese and the Wedtech officers relating to Wedtech's efforts to obtain the pontoon contract options.

On September 10, 1985, as Wedtech was pursuing the 1986 pontoon contract option, and attempting to mollify its critics in the Navy, Wedtech officers attended the Ambassadors Ball, a charity event, in Washington, D.C. As described more fully elsewhere in this Report, the Ambassadors Ball is an annual charitable function of the National Capital Chapter of the National Multiple Sclerosis Society. Mrs. Meese was co-chairman of the September 10, 1985 Ambassadors Ball.

Mr. Wallach arranged for Wedtech to purchase three \$5,000 tables at the Ball, and also arranged for purchases of \$5,000 tables by Howard M. Bender, Jeffrey N. Cohen, and Nofziger & Bragg Communications. According to Mr. Guariglia,

the principal officers of Wedtech attended the Ambassadors Ball on the suggestion of Mr. Wallach because it would be "a good opportunity for us to meet Mr. Meese."

Mr. Guariglia recalled that the officers of Wedtech met Mr. and Mrs. Meese at the Ambassadors Ball, and engaged in a conversation lasting three to five minutes. As Mr. Guariglia described the conversation, it began with Mrs. Meese commenting that "this must be the Wedtech clan." Mr. Guariglia said that Mr. Wallach led a general discussion of Wedtech's business, and recalled that the pontoon contract was specifically mentioned. According to Mr. Guariglia, Mr. Meese asked about the success of Wedtech's efforts to produce pontoons on time. It was the impression of Mr. Guariglia that Mr. Meese:

was aware of exactly where we stood with the contract. I had the impression that he was aware of who we were, what we were doing, just a general knowledge of our business. He certainly didn't inquire what we did in business. He did not inquire what contracts we were working on. It's hard to explain, but the conversation went as if he knew who we were and what we were doing.

Mr. Meese recalled that he attended the Ambassadors Ball, and that he met the Wedtech officers at that function. However, Mr. Meese's belief was that he had no business discussions with them.

Mr. Meese informed the office of independent counsel that Mr. Wallach mentioned Wedtech's efforts to get the

pontoon contract, but denied that Mr. Wallach solicited his assistance on any Wedtech matters during that time period. In fact, the evidence currently available does not indicate that Mr. Meese took any action after 1983 to assist Wedtech in connection with its efforts to obtain the pontoon contract, or to assist in any other matters of interest to Wedtech.

**VII. WALLACH/MEESE/WEDTECH RELATIONSHIPS - 1983
THROUGH 1986**

**A. November 1983 -- Mr. Wallach Decides to
Devote More Time to Wedtech and Mr. Meese**

On November 9, 1983, Mr. Wallach wrote a letter to Mr. Squadron in which he declared that he would be "spending considerably more time [on the east coast] in 1984." Mr. Wallach wrote Mr. Mariotta on December 16, 1983, and informed him that he was rearranging his affairs so that he would have additional time "to devote myself to Wedtech and to my friend in Washington as the primary, and exclusive, east coast undertakings." On January 25, 1984, Mr. Wallach sublet his San Francisco apartment, and from that point on maintained only his Washington, D.C. residence.

**B. December 6, 1983 -- Mr. Wallach's Wedtech
Compensation Is Negotiated to Include 20
Percent Referral Fee Agreement with Squadron,
Ellenoff**

Some time in 1983, Mr. Wallach had persuaded Wedtech to use the legal services of the New York City law firm of Squadron, Ellenoff, Plesent & Lehrer (Squadron, Ellenoff).

Also, on Mr. Wallach's recommendation, Wedtech agreed on September 20, 1983, to pay Squadron, Ellenoff a retainer of \$150,000 a year.

On November 9, 1983, Mr. Wallach asked Squadron, Ellenoff for a referral fee of 20 percent of the fees billed by the firm to Wedtech. By letter dated December 6, 1983, Mr. Squadron responded to Mr. Wallach:

It is agreeable to us, as you know, to pay a 20% referral fee on our basic retainer of \$12,500 a month, but not on excess time charges. In our conversation with John, he accepted the responsibility for a similar charge on the excess, provided there was a cap i.e., it applied only to legal bills up to \$300,000 per annum. In that way, the burden falls equally upon the firm and the company.

These "referral" fees provided a lucrative source of Wedtech-related income to Mr. Wallach. The evidence shows that Squadron, Ellenoff paid Mr. Wallach at least \$110,000 in 1984, at least \$50,000 in 1985, and at least \$67,000 in 1986.

C. January 13, 1984 -- Wedtech Gives Mr. Wallach Stock Options for 50,000 Shares

Even though, as previously mentioned, Mr. Wallach apparently was not performing any substantial services for Wedtech in the fall of 1983, the Wedtech officers continued to view his contacts as vital to the financial well-being of the company. On January 13, 1984, at a special meeting, the Board of Directors voted to give Mr. Wallach options to purchase 50,000 shares of common stock at a price of \$21.88 per share.

Options for 10,000 shares were immediately exercisable. Options for an additional 10,000 shares became exercisable each year for the next four years. The options, once available, remained exercisable until January 1994. Other individuals also were given stock options at that meeting; however, Mr. Wallach received more than double the number of options issued to anyone else.

Mr. Guariglia explained that the reason Mr. Wallach was issued the stock options was because, after the company went public in August 1983, Mr. Wallach learned that, under the earlier stock dilution and distribution plan, Richard Biaggi and Mr. Ehrlich received a total of five percent of the common stock, as compared to Mr. Wallach's one percent. According to Mr. Guariglia, when Mr. Wallach complained about the discrepancy, the Wedtech officers agreed to issue stock options to mollify him.^{114/}

**D. January 27, 1984 -- Wedtech Agrees to a
One-Year Consulting Agreement with
Mr. Wallach**

The agreement to give Mr. Wallach the options to purchase 50,000 shares was drafted by Squadron, Ellenoff prior to the January 13, 1984 special Board meeting discussed above.

^{114/} At the end of 1983, when Mr. Wallach was negotiating his prospective stock option agreement, he sold the Wedtech stock that he had acquired through market purchases in 1983 for a profit of \$11,802.

At the same time, the firm also submitted to the Board a proposed consulting agreement between Wedtech and Mr. Wallach.

The proposed consulting agreement was adopted by resolution of the Wedtech Board of Directors at a Friday, January 27, 1984 Board meeting. The resolution explicitly allowed the Wedtech officers complete latitude to revise the agreement. It provided for a one-year consulting agreement with Mr. Wallach commencing January 1, 1984, and terminating December 31, 1984. Under the terms of the resolution, Mr. Wallach was to receive \$100,000 per year, payable in advance in quarterly installments of \$25,000. Mr. Wallach also was to receive \$50,000 per year for expenses, payable in four equal quarterly installments, or an overall total of \$150,000. Finally, Mr. Wallach was to receive options to buy 50,000 shares of Wedtech common stock. It was understood from oral communications between Mr. Wallach and the Wedtech officers that the agreement with Mr. Wallach would be extended, pursuant to an extended term clause of the proposed consulting agreement, allowing Mr. Wallach to receive \$150,000 per year for his services in 1985 and 1986.

**E. February 2, 1984 -- Wedtech Enters into
"Prepayment Agreement" with Mr. Wallach and
Pays \$150,000 for 1984 Consulting Services**

On Thursday, February 2, 1984, within a week of the resolution to pay Mr. Wallach under the consulting agreement, the Wedtech officers, at Mr. Wallach's urging, agreed to pay

the entire 1984 consulting fee in a lump sum in advance of services for the remainder of 1984. This arrangement was summarized in a "Prepayment Agreement" which provided:

WHEREAS, the Company recognizes the amount of legal services WALLACH has done for it over the past three months (November, December and January) and the time entailed to do so; and

WHEREAS, the Company is aware of the necessary changes WALLACH was required to make in his legal schedule in California in order to accomodate said Company during the aforementioned three month period;

IN WITNESS WHEREOF, the Company and WALLACH have mutually agreed that the Consulting Agreement, previously approved by the Board of Directors of WEDTECH CORP., be prepaid effective the day and month stipulated above.

A Wedtech check for \$150,000 was delivered to Mr. Wallach at a meeting with Wedtech officers on February 3, 1984.

Mr. Guariglia and Mr. Moreno recalled that Mr. Wallach was paid "up front" because Mr. Wallach informed them that he would need the money while representing Mr. Meese in confirmation proceedings.^{115/} Mr. Guariglia recalled that,

^{115/} On December 14, 1984, Mr. Wallach executed an affidavit which was filed with the independent counsel division of the United States Court of Appeals for the District of Columbia Circuit. Mr. Wallach stated in this affidavit:

Commencing with my retention by Mr. Meese in March 1984 until September 20, 1984, when
(Footnote Continued)

t the time of the \$150,000 payment to Mr. Wallach in February 1984:

I recall hearing Bob tell the story that he did leave, or was leaving his San Francisco practice, that he was going to be spending much of his time representing Ed Meese in the confirmation hearings for Attorney General, and that he would appreciate the prepayment to help supplement his income during those proceedings.

Mr. Moreno recalled that Mr. Wallach expected to be appointed to a senior executive position in the Department of Justice such as Chief of Staff to the Attorney General. In fact, events in Washington, D.C. in January 1984 gave rise to the possibility that Mr. Wallach might have occasion to serve in some capacity in government under Mr. Meese.

Footnote Continued)

the Report of independent counsel was released, I earned no income from any source, including the practice of law, due to my inability to participate in matters in which I would have participated and which I would have concluded had I been present in San Francisco and engaged in my private practice
. . . .

Although on February 3, 1984, Mr. Wallach had been paid by Wedtech for services he was to render throughout 1984 and had been involved with Wedtech during his representation of Mr. Meese, Mr. Wallach did not disclose his Wedtech income in his affidavit.

**F. January 23, 1984 -- Mr. Wallach Becomes
Mr. Meese's Confirmation Counsel When
President Reagan Nominates Him to Be
Attorney General**

On Thursday, January 19, 1984, Attorney General William French Smith advised President Reagan that he wished to resign and return to the private practice of law. On that same date, the President asked Mr. Meese to be Attorney General.

On Friday, January 20, 1984, Messrs. Meese and Wallach flew together from Washington, D.C. to Santa Barbara, California by commercial aircraft. Mr. Meese, in testimony before the grand jury, recalled: "it is highly probable, although I can't specifically recall, that I told him about this [being offered the position of Attorney General] on that trip." In response to questions by the office of independent counsel, Mr. Wallach remembered being informed by Mr. Meese of the nomination during this trip. A public announcement was made on Monday, January 23, 1984.

As of this time, Mr. Wallach had already begun to shift his activities to the east coast. Within a few days of President Reagan's nomination of Mr. Meese, Mr. Wallach became Mr. Meese's lawyer for the confirmation hearings. There was no fee agreement; Mr. Wallach did not expect payment from Mr. Meese for this service.^{116/} Immediately after these

^{116/} Other private individuals assisted Mr. Meese in connection with the confirmation process in 1984 and 1985.
(Footnote Continued)

vents, on February 3, 1984, Wedtech executed the Prepayment Agreement, and sent the \$150,000 check to Mr. Wallach.

Notes taken by an unknown person during preparation for Mr. Meese's confirmation hearings recorded that, by February 1984, Mr. Meese knew that Mr. Wallach was a "paid consultant," presumably of Wedtech, Mr. Wallach's only known consulting client at this time. Mr. Meese testified that, as early as 1981 or 1982, he assumed that Mr. Wallach "had some sort of consultant or retainer agreement" with the company.

Mr. Meese testified that he was unaware of any representations Mr. Wallach may have made to any Wedtech official about a possible government position with Mr. Meese in order to obtain an advance retainer from Wedtech in January or February 1984. None of the Wedtech officials or any other witnesses gave any information to the office of independent counsel that indicates that Mr. Meese had any knowledge of the February 3, 1984 "Prepayment Agreement," or the reasons for the agreement.

G. March 1984 -- Mr. Meese's Nomination Hearings

Hearings on Mr. Meese's nomination as Attorney General were held on March 1, 2, 5 and 6, 1984. At that time,

Footnote Continued)

those private parties were also uncompensated. Apparently lawyers and lobbyists who assist nominees in connection with the confirmation process often are not compensated for their services.

Mr. Wallach wrote to the Wedtech officers expressing his disappointment at missing the "momentous days for Wedtech," including the pontoon contract victory, the Waldorf-Astoria speech^{117/} and other events, as a result of the fact that he was "physically, too far away." Mr. Wallach explained that:

[A]s you know, the conflict between my two 'major East Coast clients' has been at its height. We are currently in the process of concluding Ed's hearings before the Senate Judiciary Committee. I'm delighted to say that almost a month of very hard work, and careful preparation . . . [are paying off].

Mr. Meese recalled that Mr. Wallach assisted him in his preparation for the confirmation hearings, but did not remember whether Mr. Wallach was present at the initial hearings.

After questions arose concerning certain financial transactions involving Mr. Meese that were allegedly related to certain government appointments, the confirmation proceedings were adjourned pending completion of an

^{117/} On March 6, 1984, before the award of the pontoon contract to Wedtech, in a speech at the Waldorf-Astoria in New York City, President Reagan introduced Mr. Mariotta as a "hero of the eighties." According to Mr. Guariglia, Mr. Wallach asserted that he had used his White House connections to obtain that acclaim for Wedtech.

investigation of those matters by Independent Counsel Jacob A. Stein.^{118/}

Mr. Wallach introduced Mr. Meese to attorney Leonard Garment of the law firm of Dickstein, Shapiro & Morin (Dickstein, Shapiro), and, together, Mr. Garment and Mr. Wallach represented Mr. Meese during the independent counsel investigation.

From the date of his nomination as Attorney General through the date of the issuance of Independent Counsel Stein's Report on September 20, 1984, Messrs. Meese and Wallach were in regular personal contact when they were in Washington, D.C. Mr. Meese testified to his extensive communications with Mr. Wallach during that period:

Well, it would depend during that period of time. During a portion of that period when the work was not as heavy I would see him maybe two or three times a week. During a portion of the time when we were going through hearings and meetings with the Independent Counsel, I would see him as

^{118/} The principal matters referred to Independent Counsel Stein by the special division of the court involved whether there was a relationship between certain loans made to Mr. and Mrs. Meese and the appointment of various individuals to federal jobs. Other allegations pertained to possible insider trading by Mr. and Mrs. Meese; the propriety of a \$15,000 loan to Mrs. Meese, and the failure of Mr. Meese to report the loan on his 1981 Financial Disclosure Form; and whether or not a corporation received favorable treatment from the SBA because of improper White House influence by Mr. Meese.

frequently as once a day or for the major part of many days during that time.

H. October 26, 1984 -- Mr. Wallach Receives an Additional \$300,000 From Wedtech Because of Mr. Meese's Nomination as Attorney General

In or about September 1984, Mr. Wallach met with the officers of Wedtech, and asked for \$500,000 as a prepayment for his services for the years 1985 and 1986. Former Wedtech President Mr. Neuberger recalled that Mr. Wallach's request came at a time when Mr. Wallach was representing Mr. Meese in connection with his nomination to be Attorney General and the investigation by Independent Counsel Stein. According to Mr. Neuberger, Mr. Wallach indicated a need for the money because he was not being paid to represent Mr. Meese. Mr. Neuberger further stated that he understood from his conversations with Mr. Wallach that Wedtech was paying for Mr. Meese's defense in Independent Counsel Stein's investigation. Mr. Wallach pointed out to Mr. Neuberger that his representation of Mr. Meese would give him greater access to the Reagan Administration which Mr. Wallach would thereafter use to Wedtech's benefit. Mr. Neuberger recalled that he persuaded Mr. Wallach to accept \$300,000 instead of \$500,000.

Mr. Moreno also told the office of independent counsel that Mr. Wallach asked for additional money during his representation of Mr. Meese in connection with the independent

counsel investigation. Mr. Moreno believed the request was made in the summer of 1984. According to Mr. Moreno, Mr. Wallach refused to wait until 1985 to receive the \$300,000 because he wanted to receive the money as far as possible in advance of his government employment for "ethics" reasons. Mr. Moreno stated that Wedtech made the \$300,000 payment from proceeds from the sale of \$40 million in corporate bonds on May 11, 1984.

Mr. Guariglia told the independent counsel that he was summoned to a meeting with Mr. Wallach in Mr. Mariotta's office to discuss the \$300,000 payment. Mr. Guariglia recalled trying to convince Mr. Wallach to accept the money at a later time because of the adverse impact the payment would have on Wedtech's financial statements. Mr. Guariglia also argued that it was not in Mr. Wallach's interest to receive such a large amount of money in one tax year, particularly in view of the \$150,000 payment made to him in February. According to Mr. Guariglia, [

GRAND JURY MATERIAL DELETED

Mr. Guariglia's understanding was that Mr. Wallach, recognizing that he could not receive compensation from Wedtech while employed on a full-time basis by the Department of Justice, wanted to be paid in advance for services which he would render in 1985 and 1986.

Mr. Wallach traveled to New York City for meetings with the Wedtech officers around the weekend of October 27 and 28, 1984. Wedtech paid Mr. Wallach \$300,000 for future services by a check dated October 26, 1984, which Mr. Guariglia recalled personally delivering to Mr. Wallach on Saturday, October 27, 1984, at the restaurant in a hotel where Mr. Wallach was staying. This money was immediately invested by Mr. Wallach in short-term municipal notes, and was later transferred to a brokerage account in the name of an investment partnership, ERW Partners, which Mr. Wallach formed in December 1984 with a California money manager, Wayne Franklyn Chinn.

I. November 6, 1984 -- Mr. Wallach Submits an Allegedly False Invoice to Wedtech Relating To the \$300,000 Payment

Mr. Wallach wrote a letter, dated November 6, 1984, "Re: Upper Peninsula Ship Building Company," in which he acknowledged receipt of a \$300,000 check from Wedtech, and stated: "I am, of course, delighted to have played a role in assisting the Company's acquisition of this very desirable new

venture."¹¹⁹/ Mr. Wallach's reference was to the acquisition
by Wedtech of the Ontonogan shipyard in the Upper Peninsula of
Michigan.

¹¹⁹/ The full text of the letter reads as follows:

Dear Tony:

I am acknowledging receipt of the check which I
have received from the company. I am, of course,
delighted to have played a role in assisting the
Company's acquisition of this very desirable new
venture. We all share substantial optimism about
the increased potential which the remarkable
facilities provide to Wedtech.

The currently scheduled meetings with the Coast
Guard, and the extensive indications of a positive
response to the sale of the barge, are even
remarkable affirmations of the decision to acquire
the property than we had originally anticipated.

As I indicated at the time of our luncheon
meeting some months ago I am appreciative to each of
you for the value you placed upon my contribution to
the Company. I have understood for some time now
that my major "product of productivity" is often an
intangible contribution which must be realized by
those who receive it in order to be "marketable." I
also realize that I am but one member of a team
which is consistently engaged in furthering the
economic and social goals of Wedtech. It is a
continuing privilege to be a part of this
undertaking.

Best personal regards.

Very truly yours,

/s/ bob
e. robert wallach
(bob)

Mr. Guariglia told the office of independent counsel that Mr. Wallach agreed to submit the November 6, 1984 letter as an "invoice" in order to provide Wedtech an accounting basis for capitalizing the \$300,000 expense as a means of overstating the publicly reported income of Wedtech. According to Mr. Guariglia, Mr. Wallach rendered no services whatsoever to Wedtech in connection with the acquisition of the Ontonogan shipyard.^{120/}

J. Mr. Wallach and Mr. Meese Consider a Role For Mr. Wallach at the Department of Justice

The Senate hearings on the confirmation of Mr. Meese as Attorney General resumed on January 29, 1985, and continued through January 31, 1985. Mr. Meese was confirmed on February

^{120/} Wedtech informed Mr. Wallach, by a letter dated May 4, 1984, of the terms of an offer which Wedtech proposed to make at some time after May 10, 1984, to purchase the Ontonogan shipyard. Wedtech purchased the shipyard on or about August 29, 1984. A September 6, 1984 meeting agenda listed this subject as one of a number of matters for discussion between Mr. Wallach and the officers of Wedtech. Mr. Wallach thereafter listed this subject as one of the items for discussion with Wedtech officers at two other meetings scheduled for the fall of 1984.

Mr. Wallach was indicted on December 22, 1987, in the United States District Court for the Southern District of New York for, among other things, alleged violations of criminal law in connection with the \$300,000 payment.

3, 1985, and became the Attorney General on February 25, 1985.^{121/}

At the time that Mr. Meese was nominated, he and Mr. Wallach discussed the possibility of Mr. Wallach's taking position at the Department of Justice. Mr. Wallach characterized the discussions of his possibly serving as Counselor to the Attorney General as reflecting "something beyond wishful thinking and less than serious discussions."

According to Mr. Meese, at the time of the second confirmation hearings, "[w]e discussed the possibility of him [Mr. Wallach] coming aboard and I think decided it was

^{121/} Mr. Wallach remembered waiting for the Senate's vote with Mr. Meese during the Senate debate on the nomination of Mr. Meese to be Attorney General. Mr. Wallach's calendar reflected that they were together on Friday, February 22, 1985, during the Senate debate and on Saturday, February 23, 1985, the day Mr. Meese was confirmed. Mr. Wallach also remembered a party that night that both men attended to celebrate the confirmation.

The evidence shows that Mr. Wallach and Mr. Meese were in constant communication during the week after Mr. Meese's confirmation. Their calendars reflected that they had breakfast together on Monday, February 25, 1985, lunch on Tuesday, February 26, 1985, and breakfast on Thursday, February 28, 1985. Mr. Wallach's calendar reflected a farewell party for Mr. Meese at the White House on Wednesday, February 26, 1985. Mr. Wallach and Mr. Meese traveled to California together from February 28, 1985 through March 2, 1985. Mr. Wallach sent eight documents, either memoranda or letters, to Mr. Meese concerning Department of Justice affairs from February 27 through March 7, 1985.

generally not a good thing to do." Mr. Meese explained the reasons:

Well, for one thing, from a practical standpoint, he had just represented me in the Independent Counsel proceeding. I know that several of my advisors felt that that was not a good thing then to have him come right into the Justice Department. There were financial considerations still on his part. And also, there was a particular reason, and that was that at the time the fee arrangement with the Independent -- fee arrangements arising out of the Independent Counsel process had not yet been settled by the court. And so it was felt it would not be a good idea, for someone to whom I conceivably could owe major legal fees coming into the Justice Department would not be a good idea.

Mr. Meese also stated that the possibility of Mr. Wallach's taking a Department of Justice position after those issues were resolved was discussed at the time of his confirmation, and continued during the staffing of the Department after he became Attorney General. However, both he and Mr. Wallach were in agreement that "it was not a feasible idea, either from his standpoint or mine."

K. Spring 1985 -- Mr. Wallach Participates in Department of Justice Organization Matters

On February 27, 1985, two days after Mr. Meese became Attorney General, Mr. Wallach wrote Mr. Meese a 22-page, single-spaced memorandum in which he discussed the organization, operation, staffing, policies and presentation of the work of the Department of Justice.

The memorandum spelled out 17 "topics . . . for consideration as early initiatives" ranging from drugs to apartheid. Mr. Wallach mentioned briefly two possible roles for himself. He referred to his desire to be an integral part of the interview process. At another point, as Mr. Meese had suggested, Mr. Wallach indicated his desire "to provide a major assist" to Mr. Meese by helping him maintain his continued presence at the White House." Mr. Wallach concurred with Mr. Meese's suggestion because "[f]or obvious reasons, I have a particular interest in your activities here."

In four separate memoranda dated February 27, 1985, Mr. Wallach suggested to Mr. Meese two individuals for Department of Justice positions, and brought two criminal matters to Mr. Meese's attention.

On March 5, 1985, Mr. Wallach sent Mr. Meese two letters; one suggested two additional people for Department of Justice positions; the second forwarded materials in support of an individual previously recommended for a position.

In a memorandum dated March 7, 1985, Mr. Wallach discussed Mr. Meese's public stature as Attorney General, dealing with his commitment:

to make every effort to try and implement your desire for some time spent together, as often as we can, away from the hectic pace. It is my hope to be able to do that with you when you are in the office, and to travel with you, as we did this past week. It is

something that will be of interest to me, informative, and I believe, helpful in trying to provide the kind of perspective and future oriented thought which you seek from my contribution.

On April 10, 1985, Mr. Wallach sent a letter to the new Counselor to the Attorney General, T. Kenneth Cribb^{122/} in which he noted his active participation in the interview process, and named three individuals for consideration for employment by the Department of Justice.

Mr. Wallach summed up his role in the staffing of the Department of Justice in an April 16, 1985 memorandum to Mr. Meese. Mr. Wallach summarized his perception of the individuals who would be managing the Department of Justice. He also commented on the openings for Solicitor General and Assistant Attorney General for the Civil Rights Division. And he noted that Mr. Meese's apparent "executive committee" lacked "big names" gained as a result of acknowledged professional stature.

Mr. Meese testified that Mr. Wallach did not have a formal role in the Department of Justice interview process:

I don't believe he formally became a part of the process. He may have interviewed people that he knew and that I knew, at my request,

^{122/} Mr. Cribb came to the Department of Justice from the White House when Mr. Meese became the Attorney General.

as kind of an informal advisor on the matter. But I don't think he became a part of the formal process as such.

Mr. Meese acknowledged that Mr. Wallach was asked to interview individuals such as Douglas H. Ginsburg and Jack Carley, during the process of selecting the Assistant Attorney General for the Antitrust Division, in order to get an outsider's viewpoint.

After completion of the initial staffing, Mr. Wallach continued to participate in the selection and confirmation process of the senior management of the Department. He interviewed Arnold I. Burns before Mr. Burns was offered the position of Associate Attorney General in late 1985. Mr. Wallach also assisted William Bradford Reynolds and Mr. Burns during Senate hearings on their respective nominations to be Associate Attorney General in 1985 and 1986.

L. May 8, 1985 -- Mr. Wallach Reaffirms His Desire to Be Mr. Meese's Chief of Staff

In a May 1, 1985 memorandum to Mr. Meese, Mr. Wallach discussed "My Role." He emphasized that four mutual friends had advised him against taking a position at the Department of Justice. He also stated that his pending claim for an attorney's fee for the independent counsel investigation representation, as well as the resultant publicity about the fee, may have disqualified him.

Mr. Wallach nevertheless acknowledged his desire for a position with the Department:

More and more, as this time has elapsed, I have been struggling with my own ego. ... Quite frankly, and I know you will accept this as being somewhat humbly stated, I didn't interview a single person whom I didn't feel superior to as both a lawyer and a person of judgment and experience. The fact that they were potentially scheduled to occupy, and many will, positions that would be the envy of any lawyer is a reality with which I have to deal. I really have in mind the absence of recognition at this point, and in fact, have believed it a substantial assist to my effectiveness on your behalf; however, if it means making the full entry into Washington and then dealing with the question of what happens after 1988, and giving up the rather substantial income producing power that I now currently enjoy, I guess the answer is I would like to have some tangible evidence of my past as I go into my future.

What then appeals to me (and I emphasize "to me" with all its limitations) as possible:

1. Your Chief of Staff

Mr. Wallach stated in the memorandum that his lack of government experience and his registration as a Democrat precluded him from immediate appointment to other positions. He did, however, indicate his desire, after serving as Mr. Meese's Chief of Staff, to take the position of Solicitor General, or Counsel to the President, or a foreign policy position, or some other position to which he might bring "substantial expertise and knowledge."

Mr. Meese recalled that, after the fee claim was resolved on June 7, 1985, he and Mr. Wallach again discussed the question of Mr. Wallach's being employed at the Department of Justice. According to Mr. Meese:

At that particular point we did have, I can recall, a general discussion about the thing. It was still, I think, infeasible. There were a number of people who didn't think it was a good idea. There were -- he had financial needs that were beyond what the department would bear, what salary would bear. He had -- in addition to that, his ability to do a lot of things he was interested in would have been severely curtailed.

**M. April 1987 -- Mr. Meese Offers Mr. Wallach
The Position of Counselor to the Attorney
General**

On April 17, 1987, prior to his grand jury appearance, Mr. Meese was interviewed by a special agent of the Federal Bureau of Investigation with respect to the Wedtech criminal investigations. The interviewing agent reported a discussion with Mr. Meese concerning possible Department of Justice positions offered to Mr. Wallach, during which "MEESE advised that WALLACH was not considered for a position in the Department of Justice, although he and WALLACH did talk about taking a position. This discussion occurred in January or February of 1985. No specifics regarding a position were ever mentioned."

On April 20, 1987, following the interview, Mr. Meese attempted unsuccessfully to reach the special agent

by telephone. On the following day, April 21, Mr. Meese spoke by telephone to the Special Agent who recounted the telephone conversation in a report. The Agent wrote that Mr. Meese "advised that he was providing two additional pieces of information pertaining to matters covered in the previous interview." Mr. Meese made the following statements, as reported by the special agent:

Approximately one year ago, Meese was considering the formation of an advisory committee to the Department of Justice. This committee was to be comprised of lawyers from outside the Department. E. Robert Wallach was asked by Meese to be the Chairman of this advisory committee. Meese likened the committee to the Advisory Commission of Public Diplomacy (part of the United States Information Agency), on which Wallach serves as a Commissioner. Wallach told Meese that he could not serve on the advisory committee at that time because of other commitments.

Meese advised that approximately two weeks ago, Wallach was asked to serve as counsel on the personal staff of the Attorney General within the Department of Justice. Ken Cribb, who had held the position, had left to take a position at the White House. Meese did not advise as to whether a decision had yet been made.

On October 30, 1987, when he was before the grand jury, Mr. Meese was asked whether, since July of 1985, he had offered Mr. Wallach any position at the Department of Justice. Mr. Meese at first responded that "We may have had general discussions from time to time on one or more occasions, but I

don't remember -- but never to the point that I remember discussing a specific position."

Mr. Meese was shown the special agent's report of Mr. Meese's April 21, 1987 statements. After reading the report, Mr. Meese testified that it "refreshed (his) recollection," and that "I had discussed with Mr. Wallach the possibility of him serving on my personal staff to take Ken Cribb's place." Mr. Meese then testified as follows:

Independent Counsel: Now, Ken Cribb had left the Department or was leaving the Department in April of 1987?

Mr. Meese: He was leaving or had left just recently to take a position at the White House.

Independent Counsel: Do you recall telling Special Agent Murphy, or for that matter do you recall telling Mr. Burns,^{123/} your deputy, that you had offered a job to Mr. Wallach and that the job offer was still outstanding for Mr. Wallach to take Mr.

^{123/} Mr. Meese formally recused himself from all Department of Justice matters involving Mr. Wallach on April 8, 1987, immediately after he was formally advised by his subordinates that Mr. Wallach was a subject of the Wedtech criminal investigations. Arnold I. Burns, former Deputy Attorney General, recalled being alone with Mr. Meese in his office at some time after April 8, 1987, when Mr. Meese told him that he had offered Mr. Wallach the position of Counselor to the Attorney General, that the offer was still open, and that the understanding was that Mr. Wallach would replace Mr. Cribb after he left the position.

Mr. Burns was "astonished" to hear this from Mr. Meese, but he maintained a "poker face," and responded by saying "oh." Mr. Burns recalled that he felt that this was something that Mr. Meese wanted to tell him.

Cribb's position at the Department of Justice?

Mr. Meese: This does refresh my recollection that I had done that. I had forgotten about that.

Independent Counsel: Did Mr. Wallach ever respond to your offer of a job?

Mr. Meese: I don't believe that he did. I think, to be exactly accurate, I talked to him about his taking that position and indicated that if he was interested, I would be highly interested in having him do that. It didn't get down to the actual point of a job offer per se, and he was going to talk with me about it. I think that what happened was, and this -- when he says "two weeks ago," it probably was a little more than that, because on the 8th of April of 1987 I learned that Mr. Wallach was a subject of an investigation, and therefore that would have terminated any further discussion about this.

Independent Counsel: So do you believe that your job offer or discussion with Mr. Wallach about joining you as your counsel would have taken place before April 8th?

Mr. Meese: Yes, definitely, because I know that I did not talk with him about anything pertaining to the Department after the 8th of April.

Independent Counsel: Of 1987?

Mr. Meese: Of 1987, right, and I think, again, it was not a specific job offer, but more in talking to him about whether that might work out.

Independent Counsel: Well, were you -- if he had said yes, would you have hired him?

Mr. Meese: Well, not because of the -- because of the intervening events, no.

Independent Counsel: But without the intervening
--

Mr. Meese: Without the intervening events, I think it would have been possible, yes.

Independent Counsel: Is there anything other than the intervening events, meaning the investigation and the information about the investigation, that would have stopped you from hiring him? I mean, I think I don't understand your answer. You said it would be possible that you would have hired him.

Mr. Meese: Well, it would have had to do with whether he could accept the job because of his own financial situation and so on. Whether there were any other reasons why he couldn't --

Independent Counsel: Assuming that he --

Mr. Meese: But assuming that he would have been available to take the job, and that there were no outstanding impediments, then I would like to have had him serve in that position, yes.

N. Summary of Wallach/Meese/Wedtech Relationship
-- 1983 Through 1986

The independent counsel has concluded that, from 1983 through 1986, Mr. Wallach continued to tout his usefulness to Wedtech because of his asserted ability to obtain Mr. Meese's intervention on Wedtech's behalf. Mr. Wallach's success in persuading Wedtech officers of that purported ability was enhanced by his provision of legal services to Mr. Meese, and by Mr. Meese's apparent willingness to consider appointing Mr. Wallach to a position in the Department of Justice. In fact, the evidence shows that, because of those circumstances, Mr. Wallach was able to persuade the Wedtech officers that it was in the company's interest to pay him

substantial sums of money to subsidize his services to Mr. Meese.

The independent counsel has determined, however, that there is no currently available evidence to confirm that Mr. Wallach ever sought Mr. Meese's intercession on behalf of Wedtech, or that Mr. Meese took any action on Wedtech's behalf, after July 1983. Nor has the independent counsel discovered any evidence that Mr. Meese was aware of the fact that Mr. Wallach was obtaining money from Wedtech by exploiting his access to and friendship with Mr. Meese.

**VIII. 1985 -- AT MR. WALLACH'S URGING, MR. CHINN
AND DR. LONDON BECOME A PART OF WEDTECH
MANAGEMENT**

**A. April 1985 - Mr. Wallach Introduces
Mr. Chinn and Dr. London to Wedtech**

In April 1985, Mr. Wallach introduced Mr. Chinn and Dr. Rusty Kent London to the officers of Wedtech.^{124/} Since

^{124/} Mr. Wallach met Dr. London in or around September 1983, and developed a social relationship with him when Dr. London was Mr. Wallach's landlord and client. Dr. London was a friend and informal business partner of Mr. Chinn.

On or about December 11, 1984, Dr. London introduced Mr. Wallach to Mr. Chinn, who was then an inactive San Francisco money manager. As noted earlier, Mr. Chinn managed the \$300,000 Wedtech "prepayment" for Mr. Wallach through his investment partnership with Mr. Wallach. By January 1985, Mr. Chinn had revived his investment management activities for another customer by investing in Wedtech securities.

at least the spring of 1983, Mr. Wallach had discussed his concerns about the management of Wedtech with the company officers. It was Mr. Wallach's view that the management team was disorganized and inadequate.^{125/}

Mr. Wallach characterized Mr. Chinn and Dr. London to the Wedtech officers as financial managers who could greatly assist the corporation with management problems, and could assist in maintaining the market price of Wedtech securities.^{126/}

Mr. Wallach told the Wedtech officers that the \$300,000 received by Mr. Wallach from Wedtech had been

^{125/} These concerns were being expressed at a time when, as previously discussed, Mr. Wallach was actively involved, first in the confirmation process on behalf of Mr. Meese, and next in assisting Mr. Meese in hiring and management decisions at the Department of Justice. When Mr. Meese's confirmation seemed to be assured, Mr. Wallach resumed his regular written correspondence with the Wedtech officers. He suggested in one letter the commencement of "a regularly scheduled . . . series of meetings which will take into account my increased presence on the east coast."

^{126/} As described elsewhere in this Report, shortly before he introduced Dr. London and Mr. Chinn to the officers of Wedtech, Mr. Wallach recommended to Mr. Meese that the assets of Mr. and Mrs. Meese be invested by Mr. Chinn. Mr. Meese and Mr. Chinn arranged for liquidation of Mr. and Mrs. Meese's securities through accounts managed by Mr. Chinn, and reinvestment of the proceeds by Mr. Chinn through their partnership, Meese Partners. The bulk of the Meeses' securities were sent to Mr. Chinn by May 23, 1985, and were sold in May and June 1985. The Meese Partners trading account was opened by Mr. Chinn on July 10, 1985.

invested by Mr. Chinn, and that he already had received a significant return on the investment. According to Mr. Guariglia, Mr. Wallach also informed them that Dr. London and Mr. Chinn were money managers for individuals in the Reagan Administration. However, records provided by Mr. Chinn do not reflect any services to any other government official. Mr. Chinn's employees and colleagues informed the office of independent counsel that Mr. Meese was the only administration official known to them to be among Mr. Chinn's clients.^{127/}

B. April 12, 1985 - Wedtech Authorizes Additional Stock Options for Mr. Wallach

On April 12, 1985, the Board of Directors of Wedtech authorized an amendment to the 1983 Incentive Stock Option Plan which permitted the issuance of additional stock options. At that meeting, Mr. Wallach was elected to the independent consulting group charged with the administration of the plan. The Board authorized the issuance of stock options for an additional 50,000 shares of Wedtech common stock to

^{127/} Before the introduction of Messrs. Chinn and London to the firm, the Wedtech officers had rejected all suggestions of management changes. They were already extensively engaged in criminal enterprises, including commercial bribery schemes conducted through corporate slush funds. They apparently concealed those illegal schemes from Mr. Wallach and from any individuals available to join Wedtech's management.

Mr. Wallach. On April 13, 1985, Mr. Wallach executed a Stock Option Agreement providing for the grant of stock options for the additional shares at the market price on the day of the grant and on the same other terms as his previous options.^{128/}

C. April 30, 1985 - Mr. Chinn and Dr. London
Become Consultants of Wedtech

By letter to the Wedtech officers dated April 22, 1985, Mr. Wallach again mentioned the need to strengthen the Wedtech management. He also encouraged them to: "Listen carefully to our friends from the west coast. I feel very certain about their ability to contribute in a meaningful way to the future economic benefit of this company." Mr. Guariglia understood this allusion to be a reference to Mr. Chinn and Dr. London. Immediately thereafter, Mr. Wallach scheduled a meeting for April 30, 1985, in New York City, of the Wedtech officers with Dr. London and Mr. Chinn.

On April 30, 1985, Wedtech retained Mr. Chinn and Dr. London as consultants to the corporation. The consulting

^{128/} As of this time, Mr. Wallach was taking steps necessary to sell 45,000 shares of Wedtech common stock pursuant to the registration exception provided by Rule 144 of the United States Securities and Exchange Commission, 17 C.F.R. 230.144. On May 24, 1985, he sold 38,000 shares of Wedtech common stock for \$482,709 through Mr. Chinn, and used the proceeds to pay an outstanding loan.

agreements provided that Mr. Chinn and Dr. London would introduce Wedtech to financing sources and customers. In addition, Mr. Chinn and Dr. London were to perform public relations services for Wedtech.^{129/}

Wedtech, Dr. London and Mr. Chinn executed stock option agreements which provided each of them with options to purchase up to 50,000 shares of Wedtech common stock at that day's price of \$13.875 per share. One-half of the options were

^{129/} The former Wedtech officers have described various services which Mr. Chinn and Dr. London provided Wedtech and individual officers of Wedtech. Checks produced by Wedtech and the former officials reflected the substantial compensation paid to Mr. Chinn and Dr. London:

- (1) \$1,140,000 paid by Wedtech in connection with a January 23, 1986 securities offering, with \$1 million being paid on January 29, 1986 and \$140,000 being paid in July 1986;
- (2) \$681,235 paid by the Wedtech officers in April 1986 for efforts to maintain the price of Wedtech stock pursuant to a written agreement of June 19, 1985; and
- (3) \$240,000 paid by two Wedtech officers in the fall of 1986 in return for Mr. Chinn's vote as a Director in favor of granting additional stock options to those officers.

In addition, consulting agreements between Wedtech and Mr. Chinn and Dr. London provided for the payment of their expenses. There is evidence that expense reimbursements may have provided another means for the payment of Wedtech funds to Mr. Chinn and Dr. London. The bankruptcy trustee for Wedtech is currently seeking to recover at least \$165,000 of \$267,000 paid by Wedtech to Mr. Chinn and Dr. London for expenses incurred over the course of their association with Wedtech.

immediately exercisable; the remainder became exercisable in monthly increments over the next year, with all the options exercisable up until April 1995.

D. July 9, 1985 -- Washington, D.C.
Wedtech Strategy Meeting; Wedtech
Management Changes

The Wedtech officers, Mr. Wallach, Mr. Chinn, Dr. London, Mr. Nofziger, Mr. Bragg and Wedtech consultant James E. Jenkins^{130/} attended a meeting at a Washington, D.C. hotel on July 9, 1985.^{131/} The purpose of the meeting was to organize efforts to obtain the 1986 pontoon

^{130/} Mr. Jenkins, who was Deputy Counselor to the President when the Army small engine contract and Wedtech's 1983 EDA subordination agreement were obtained, left the White House in May 1984 and began providing consulting services to Wedtech beginning on or about June 1, 1985, through an association with Nofziger and Bragg Communications. By this time, Mr. Jenkins was operating his own Washington, D.C. consulting business. Mr. Wallach had introduced Mr. Jenkins to Wedtech earlier in 1985. On or about May 1, 1986, Wedtech hired Mr. Jenkins to head its Washington, D.C. office. According to the Wedtech officers, Mr. Jenkins provided valuable services to Wedtech in connection with its efforts to obtain military contracts, and was compensated solely for those services.

^{131/} By July 9, 1985, as will be described elsewhere in this Report, Mr. Wallach also was involved in the Aqaba pipeline project. That same day he introduced Wedtech to Julius Kaplan, a Washington, D.C. lawyer who was also representing Swiss industrialist Bruce Rappaport in connection with the Aqaba pipeline project. Mr. Wallach's calendar for July 9, 1985, reflected a meeting, with former National Security Advisor William P. Clark, between the time of his lunch with Wedtech and a later meeting with Mr. Meese.

contract options and other government contracts as a means of insuring favorable publicly reported financial results.

Mr. Guariglia also understood that one purpose of this meeting was to take steps to improve the management of Wedtech.^{132/}

Shortly after the Wedtech meeting, at 3 p.m. on the the same day, Mr. Wallach, Mr. Chinn and Dr. London visited Mr. Meese at his office. Mr. Meese did not remember that there was any discussion of Wedtech at that meeting.

Mr. Guariglia became the President of Wedtech on or about July 9, 1985. Within a month, the Wedtech officers had also had decided that Mr. Chinn would become a member of the Board of Directors. And, on August 13, 1985, Mr. Chinn was elected to that position.

E. Summer of 1985 -- Wedtech Officers Agree to Pay Mr. Wallach Additional Compensation

Between the July 9, 1985 meeting and August 5, 1985, Wedtech officers agreed to "raise" Mr. Wallach's 1985

^{132/} In Mr. Guariglia's opinion, the intentions of Mr. Wallach, Mr. Chinn and Dr. London were to take over Wedtech. Mr. Guariglia believed that they intended to do so by alienating the two founders of the company, Mr. Mariotta and Mr. Neuberger, in order to break up the controlling block of stock owned by the two men. In the fall of 1985, these efforts appeared to have accelerated, as Wedtech was preparing to issue a second public offering of common stock. By December 1985, the other members of the Wedtech management team had agreed to replace Mr. Mariotta; he finally left his position as Wedtech's Chairman of the Board effective February 11, 1986.

compensation by an additional \$150,000. Mr. Guariglia remembered that the decision was made in connection with Wedtech's efforts to obtain the 1986 pontoon contract options. According to both Mr. Guariglia and Mr. Moreno, Mr. Wallach learned that Mr. Bragg and Mr. Nofziger had entered into a lucrative compensation agreement which would reward them with as much as \$400,000 in connection with efforts to obtain the options for Wedtech. Mr. Wallach demanded \$150,000 in additional 1985 compensation for himself.

Mr. Guariglia recalled that Mr. Wallach did not want the \$150,000 to be paid directly to him [

GRAND JURY MATERIAL DELETED

]

Wedtech officers opposed paying the additional \$150,000 to Mr. Wallach in one lump sum. Accordingly, it was agreed that an initial payment of \$58,333.33 would be made to be followed by eleven monthly payments of \$8,333.33 each. Mr. Guariglia also recalled that Wedtech officers did not want

to record the payment to Mr. Wallach in Wedtech's financial statements as an ordinary expense because such treatment of the payment would lower the company's publicly reported income. Accordingly, it was agreed between Wedtech, Mr. Wallach and Dr. London that the payments would be reflected by an invoice relating to an expense which could be capitalized and spread over a period of years.

The agreed "expense" was recorded in Wedtech's financial statements as a charge by IFCI for consulting services in connection with efforts to sell a "Tug Barge System" acquired by Wedtech with the Ontonogan Shipyard acquisition. According to Mr. Guariglia, neither Mr. Wallach, Dr. London nor Mr. Chinn provided Wedtech with any services in connection with the unsuccessful attempt by Wedtech to sell the Tug Barge System. Nevertheless, Dr. London furnished Wedtech with the requested invoice, bearing the date of July 1, 1985. On August 5, 1985, Mr. Guariglia provided Dr. London with a check for \$58,333.33. Wedtech thereafter made at least five payments of \$8,333 to IFCI at approximately monthly intervals until January 1986. Total payments pursuant to this agreement amounted to at least \$99,998.98.^{133/}

^{133/} Mr. Wallach, Dr. London and Mr. Chinn were indicted in the United States District Court for the Southern District of New York for, among other things, alleged violations of criminal law in connection with these payments.

**F. January 23, 1986 -- Wedtech Common Stock
Offering Results in \$1 Million Being Paid to
Messrs. Chinn, London, Guariglia, and
Possibly Mr. Wallach**

In October 1985, Wedtech was planning to offer additional common stock to the public as a means of raising funds for the corporation. Wedtech was again at the limit of its existing credit, and needed to borrow additional money to continue in business. Wedtech's ability to borrow substantial sums depended on its successful completion of the public offering. In fact, as expressed to the office of independent counsel, Mr. Guariglia believed that the completion of the offering was essential to the continued existence of Wedtech.

During the period when efforts were being made to complete the public offering, Mr. Guariglia recalled a meeting in December 1985 with Mr. Chinn and Dr. London in New York City. The importance of the offering to Wedtech was discussed at the meeting. Mr. Guariglia testified that he offered Mr. Chinn and Dr. London an incentive:

Because of the desperate need to have a successful public offering, I indicated to him [Mr. Chinn] that if he would help place initially two million shares, which was the proposed offering, that I would give him \$1 million.

Initially not in jest, but semi-serious. But certainly later on in the conversation it became a realistic situation.

Mr. Guariglia testified that, because Dr. London and Mr. Chinn were partners, it was understood that Dr. London would also be a party to this agreement.

In subsequent conversations, Dr. London and Mr. Chinn offered Mr. Guariglia \$200,000 of the \$1 million return for his obtaining the consent of the other Wedtech officers to the agreement. This was successfully accomplished by Mr. Guariglia, who agreed, at the suggestion of Dr. London and Mr. Chinn, to receive \$100,000 in cash in lieu of a check for \$200,000.

Mr. Guariglia understood that Mr. Wallach also was to receive \$200,000 as his share of the \$1 million, although he did not know whether Mr. Wallach was to receive a \$200,000 check or \$100,000 in cash. Mr. Guariglia regarded this arrangement as constituting the formation of a "partnership" by Mr. Chinn, Dr. London and Mr. Wallach for the purpose of controlling Wedtech.

During the period before the public offering, Mr. Chinn and Dr. London made presentations concerning Wedtech, commonly known as road shows, to securities brokers at various locations. Mr. Guariglia believed that Mr. Chinn also took active steps to place Wedtech common stock with investors. At the same time, Dr. London led efforts of Wedtech to complete an agreement concerning the coating process, and to publicly announce that agreement in connection with the offering.

Wedtech's second offering was successfully completed on January 23, 1986. The company sold 1.75 million shares of common stock at \$10.125 per share for gross proceeds of \$17.7 million. On January 30, 1986, Wedtech received \$16.6 million as its portion of the proceeds.

Mr. Chinn and Dr. London traveled from New York City to Washington, D.C., on January 29, 1986, and joined Mr. Wallach and Mr. Meese for lunch at the Department of Justice. Mr. Meese did not recall any discussion about Wedtech. Mr. Chinn and Dr. London then returned to New York City after the lunch.

On the night of January 29, 1986, in a New York City hotel, Mr. Guariglia personally delivered a Wedtech check to Mr. Chinn and Dr. London for \$1 million, payable to IFCI.

According to Mr. Guariglia, Mr. Chinn and Dr. London did not mention to him any meeting with Mr. Meese at the time he delivered the \$1 million check to them.

On January 30, 1986, an invoice was sent from IFCI to Wedtech, reflecting the \$1,140,000 obligation. This invoice included \$1,140,000 as a fee for services rendered in connection with the stock offering. Mr. Guariglia recalled that the remaining \$140,000, covering the expenses of Mr. Chinn and Dr. London, was paid by Wedtech at a later time. According to Mr. Guariglia, Mr. Chinn fulfilled his part of the bargain by bringing \$100,000 in cash to Mr. Guariglia's

home in packages of bills of the kind used by a Las Vegas, Nevada casino.

Mr. Guariglia did not have any personal knowledge as to whether or not Mr. Wallach received a portion of the \$1 million. However, he was told by Mr. Chinn that Mr. Wallach did receive his share.

The independent counsel has discovered no evidence or indication that any portion of the \$1,140,000 received from Wedtech by Mr. Chinn and Dr. London was paid to any government official or to anyone other than Mr. Chinn, Dr. London, Mr. Guariglia, and possibly Mr. Wallach.^{134/}

**IX. STATEMENTS CONCERNING MR. MEESE'S PURPORTED
ACTIVITIES ON BEHALF OF WEDTECH**

**A. Statements Allegedly Made by Mr. Wallach
to the Wedtech Officers Concerning His
Communications with Mr. Meese**

The four cooperating Wedtech officers told the office of independent counsel that Mr. Wallach regularly implied to them that Mr. Meese was actively involved in dealings between Wedtech and officials of the United States

^{134/} Mr. Neuberger told the office of independent counsel that Mr. Chinn indicated that the \$1 million payment to him and Dr. London was necessary to cover "baksheesh" to be paid individuals in Washington, D.C. Mr. Neuberger understood this statement as a reference to the need to pay bribes. Mr. Neuberger's statement is the only suggestion that Mr. Chinn or Dr. London intended to bribe any government official.

government. The officers credited Mr. Wallach's assurances to the extent that Mr. Moreno suggested to Mr. Mariotta and Mr. Wallach on separate occasions that Wedtech should "do something" for Mr. Meese. According to Mr. Moreno, Mr. Mariotta agreed, but Mr. Wallach indicated that this matter should be considered later.

The only relevant communications known to the independent counsel between Mr. Wallach and Mr. Meese concerning Wedtech are described in this Report. None of them indicates that any payment was made by Wedtech directly or indirectly to Mr. Meese. Furthermore, the independent counsel knows of no acts performed by Mr. Meese which may have benefited Wedtech other than those described in this Report. It should be noted, however, that no information on this subject has been obtained from Mr. Mariotta or Mr. Wallach because, as pointed out earlier herein, each of them has invoked his constitutional privilege not to be compelled to be a witness against himself.

B. Statements Allegedly Made by Mr. Chinn and Dr. London to Wedtech Officers Concerning Alleged Communications with Mr. Meese

According to former Wedtech officers, Anthony Guariglia and Mario Moreno, Mr. Chinn and Dr. London claimed to have lobbied Mr. Meese on behalf of Wedtech in connection

with the efforts to obtain the pontoon contract options, and to obtain an Army maintenance vehicle contract. Those lobbying activities allegedly occurred at the time Mr. Chinn was providing financial services to Mr. Meese. Mr. Guariglia stated:

We were all very concerned about the pontoon 1986 option, and primarily the maintenance vehicle. Mr. London and Chinn on many occasions and on conference calls or individual calls that I had with them from my home late at night indicated to me that they spoke directly to Ed Meese and that everything was being taken care of and don't worry about it. One conversation I specifically recall on the pontoon option when Rusty London indicated to me that Frank and him had spoken to Mr. Meese and that the option was done, that we were going to get the award.

According to Mr. Meese, he learned at the beginning of his relationship with Mr. Chinn that, at Mr. Wallach's request, Mr. Chinn was to "help out" Wedtech. In addition, Mr. Meese stated that he learned during social contacts with Dr. London that he also was to be "involved with helping with Wedtech." However, Mr. Meese did not remember any mention of any specific Wedtech activity in any discussions with Mr. Chinn or Dr. London; he recalled only that "at one of these social events there may have been casual conversation about Wedtech."

As noted previously, sometime prior to Mr. Chinn's election as a director of Wedtech on August 13, 1985, the

officers of Wedtech had decided to appoint him to that position. However, Mr. Meese said that he did not learn of Mr. Chinn's increased role with Wedtech until it was reported in the press in late 1986 or early 1987. Mr. Meese denied knowing of any activities of Mr. Chinn or Dr. London relating to their dealings with the United States government on behalf of Wedtech.

X. MR. WALLACH'S ROLE IN WEDTECH CRIMINAL INVESTIGATIONS

The final area of investigation concerning allegations of wrongdoing related to Wedtech concerns Wedtech's frantic efforts, as the activities of its officers came under criminal investigation in late 1986, to use Mr. Wallach's purported influence with Mr. Meese to terminate the Department of Justice's investigation. Again, however, the independent counsel has found no evidence that Mr. Meese intervened in any way on Wedtech's behalf.

A. Wedtech Becomes Embroiled in Criminal Investigations

By June 1986, Wedtech had received grand jury subpoenas in connection with an alleged defense contract fraud being investigated by a state grand jury in New York County. This marked the beginning of criminal investigations by federal and state authorities of various bribery schemes and

other corrupt activities by the officers and directors of Wedtech.^{135/}

In the fall of 1986, the growing criminal investigations occupied the full attention of all the officers of Wedtech. Mr. Chinn and Dr. London withdrew from the affairs of the company as the investigations expanded.

At the time the first subpoenas were received by the officers of Wedtech, it was decided that they should be disclosed only to Mr. Wallach, senior management of the company, counsel retained for the criminal investigations and individuals involved in the conduct under investigation. The principal reason for this decision was that Wedtech was in the process of raising \$75 million through the sale of publicly-traded corporate bonds. The bond offering was issued on July 15, 1986. Although Squadron, Ellenoff was the general counsel for the company, that firm was not informed of the criminal investigations until October 1986.

Mr. Guariglia recalled that the first press accounts concerning the criminal investigations of Wedtech began appearing in early October 1986. Shortly thereafter, the

• ^{135/} The initial phase of the inquiry culminated on January 30, 1987 when Mr. Neuberger, Mr. Moreno, Mr. Guariglia and Mr. Shorten each entered a plea of guilty to at least one federal felony charge arising from activity as an officer of Wedtech.

officers of Wedtech informed Squadron, Ellenoff, of the grand jury subpoenas.

**B. Fall 1986 -- Mr. Wallach Represents
 Wedtech for Criminal Investigations**

In October 1986, Mr. Wallach recommended that Wedtech retain Dickstein, Shapiro and Morin (Dickstein, Shapiro), with which he was associated. The firm was retained on October 10, 1986, to represent Wedtech in connection with a federal criminal investigation in Maryland, and an audit by the Department of Defense which stemmed from an alleged progress payment fraud by Wedtech.

Mr. Guariglia, Mr. Moreno and Mr. Neuberger described to the office of independent counsel three meetings in October and early November 1986 at a restaurant at La Guardia Airport, between Mr. Wallach and Wedtech officers, at which the status of the various criminal investigations was discussed. According to the three former Wedtech officers, Mr. Wallach was not aware of the entire range of their criminal conduct when he attended the meetings.

Mr. Guariglia recalled that at these meetings Mr. Wallach represented that he was discussing the investigations with Mr. Meese, and obtaining information concerning the investigations from him. In addition, Mr. Guariglia understood from Mr. Wallach that Mr. Meese was, at Mr. Wallach's request, taking actions to stop the investigations. According to Mr. Guariglia, Mr. Wallach

"stated in the third meeting that he spoke to Ed Meese and that, I don't know if he said 'he' or 'we,' 'were doing everything that had to be done to squash the investigation.'"

While Mr. Wallach purportedly provided information concerning the various investigations, and promised to furnish further information from the Department of Justice, at no time did he identify the source of any specific piece of information. Mr. Guariglia understood from Mr. Wallach that he also was obtaining information from the attorneys representing Wedtech in connection with the various investigations. Mr. Guariglia acknowledged to the office of independent counsel that all of Mr. Wallach's purported information may have come from sources other than Mr. Meese.

By the end of October 1986, Mr. Wallach was acting as "coordinating counsel" for Wedtech in connection with all the matters under investigation at the time. When Squadron, Ellenoff learned of Mr. Wallach's role, it expressed concerns with respect to Mr. Wallach's role and his handling of Wedtech matters. The Wedtech officers decided to rely on Mr. Wallach, and accept the risk that their general counsel might resign because, according to Mr. Guariglia, "we thought Mr. Wallach would deliver Mr. Meese in helping to put a stop to the investigation." The Wedtech officers persisted in this belief when confronted by Squadron, Ellenoff attorneys, who insisted that Mr. Wallach could not "deliver" Mr. Meese's assistance.

Squadron, Ellenoff resigned as general counsel for Wedtech in or about the first week of December 1986. Mr. Guariglia told the office of independent counsel that Wedtech's choice of Mr. Wallach over Squadron, Ellenoff was "based solely on our belief that Robert Wallach could in fact deliver Ed Meese to stop this investigation." This belief apparently was based in part on statements made by Mr. Wallach to the Wedtech officers.

Wedtech's overall legal and business circumstances were in a state of growing crisis when Squadron, Ellenoff resigned, and Wedtech sought new legal counsel. On December 8, 1986, on Mr. Wallach's recommendation, Wedtech turned to Dickstein, Shapiro and Mr. Wallach. Wedtech signed a retainer agreement with Dickstein, Shapiro, and tendered a check in the amount of \$500,000 to the firm. At the same time, Wedtech tendered a check in the amount of \$95,000 to Mr. Wallach.

The Wedtech officers spent December 8, 9 and 10, 1986 in continuous meetings with Mr. Wallach and other Dickstein, Shapiro attorneys at the New York City offices of Dickstein, Shapiro. Mr. Moreno and Mr. Guariglia recalled that Mr. Wallach was present at some of those meetings. At a private meeting between Messrs. Wallach, Moreno and Guariglia in the New York City office of Dickstein, Shapiro during this three-day period, the two Wedtech officers each offered to pay

Mr. Wallach \$100,000 if he stopped the investigations.

Mr. Guariglia characterized the purpose of this offer:

It wasn't an offer to represent us. It was an offer for him to get on a plane, get to Washington and talk to Ed Meese. That was it. It was not an offer to engage him as an attorney to represent me. It was an offer, if you get it done, I will give you a bonus of \$100,000.

According to Mr. Guariglia, Mr. Wallach "accepted it. . . . He said, 'I'm very appreciative of the offer. It's a nice amount of money. And if I succeed, I will take the \$100,000.'"

C. December 10, 1986 -- Wedtech Officers
Break with Mr. Wallach

On December 10, 1986, Dickstein, Shapiro decided to terminate its representation of Wedtech. The firm and Mr. Wallach returned to Wedtech the fees which had been tendered on December 8, 1986. At that point, both Mr. Wallach and Dickstein, Shapiro ceased representing Wedtech.

Mr. Guariglia recalled the decision of Dickstein, Shapiro not to represent Wedtech, and a telephone conversation with Mr. Wallach on December 10 just before the four Wedtech officers -- Guariglia, Moreno, Neuberger, and Shorten retained new counsel:

I remember Bob being very upset because Bob, I believe, called us at Dickstein, Shapiro right before we walked out and said, "Just take it easy, don't do anything," da da da [sic]. We said, "Okay, Bob" we hung up the

phone, and then we said, "The hell with him. The hell with [Dickstein, Shapiro]." We got in the cab and we went to [present corporate counsel Martin R.] Pollner's office.

This was the last conversation Mr. Guariglia remembered having with Mr. Wallach. He recalled that:

the very next day [December 11, 1986] after that night in Pollner's office I believe Wallach was immediately on the phone with Mr. Pollner and trying to get rooted into Pollner's firm. I remember Marty Pollner telling me that every day that Wallach was calling, and he said, "what should I do?" I said, just hang up the phone, because we knew at that point we were dead. By making the decision to file for bankruptcy, it was over. The battle was over. And it was shortly thereafter that we made the decision to cooperate.

D. December 11, 1986 -- Mr. Wallach Has Intense Private Conversation with Mr. Meese

On December 11, 1986, Mr. Meese was in New York City for a television interview at the studios of the National Broadcasting Company. Mr. Wallach appeared unannounced at Mr. Meese's hotel room at about 10 a.m., during the period which had been set aside to prepare Mr. Meese for his interview. According to Terry H. Eastland, then the Director of the Department of Justice's Office of Public Affairs, Mr. Wallach engaged Mr. Meese in a private and very intense conversation. Mr. Eastland recalled that Mr. Wallach preempted 25 of the 30 minutes available to Mr. Eastland for the preparation of Mr. Meese.

When questioned about this, Mr. Meese recalled that he met with Mr. Wallach during a part of his preparation time for the interview, but stated that he did not remember the subject discussed. When asked if Mr. Wallach might have described his break from Wedtech, Mr. Meese indicated that, "[i]t's entirely possible he might have discussed that with me or mentioned it to me, but I don't have a recollection of it."

At a deposition given to the independent counsel on November 22, 1987, Mr. Meese clarified his grand jury testimony concerning his conversations with Mr. Wallach on December 11, 1986. Mr. Meese stated at the deposition that "I would say that probable would be better, so I would say it's entirely possible, actually probable, that he [Mr. Wallach] might have discussed it [the events that were going on with Wedtech] with me." When he was thereafter informed that Wedtech had parted company with Mr. Wallach on December 10, 1986, Mr. Meese observed that, in his view, having been informed of that fact, "it makes it even more correct then to say it is probable that he did discuss that with me even though I don't have any specific recollection."

E. Wedtech Files for Bankruptcy Protection

After Dickstein, Shapiro decided, on December 10, 1986, that it would no longer represent Wedtech, the officers of the company immediately retained the firm of Pollner,

Mezan, Stolzberg, Berger and Glass. On or about December 13, 1986, the Board of Directors of Wedtech voted to file for protection under Chapter 11 of the Bankruptcy Act. Wedtech filed its Chapter 11 petition under the Bankruptcy Act on December 15, 1986.

Mr. Pollner arranged for the four officers to each obtain separate lawyers. The officers obtained lawyers, and, on January 30, 1987, each of them entered a plea of guilty to at least one felony count for crimes committed in the course of their management of Wedtech.

**F. October 1986 through January 1987 --
Mr. Meese Has No Known Role in
Wedtech Investigations**

The evidence shows that the Wedtech criminal investigations were brought to the attention of Mr. Meese when he learned in early November 1986 of the possible involvement of Mr. Nofziger. Mr. Meese immediately recused himself from the preliminary investigation of Mr. Nofziger's activities, apparently because of his longstanding friendship with Mr. Nofziger.

An entry in one of Mr. Meese's spiral notebooks indicated that at 7:07 p.m. on February 1, 1987, he was informed of the issuance of subpoenas to Congressman Biaggi and two other individuals. These subpoenas were routinely approved. That routine notification of the issuance of the

subpoenas did not lead Mr. Meese to consider recusing himself from the investigations of Wedtech.

The independent counsel has found no evidence that, in connection with any of his activities, Mr. Meese learned any details of the Wedtech investigations useful to defense counsel. Furthermore, there is no evidence that Mr. Meese provided any information of any kind relating to the investigation to anyone outside the Department of Justice.

On April 6, 1987, when Mr. Meese was formally advised by his subordinates that Mr. Wallach was the subject of a federal criminal investigation of Wedtech. On April 8, he recused himself from all further participation in Wedtech matters. Mr. Meese also ceased consulting with Mr. Wallach on matters relating to the Department of Justice.

PART TWO

FINANCIAL RELATIONSHIPS
BETWEEN MR. MEESE AND MR. CHINN
RELATING TO MEESE PARTNERS

On May 11, 1987, the independent counsel accepted a referral from the Department of Justice to examine "Mr. Meese's relationship or dealings at any time from 1981 to the present with . . . : Welbilt Electronic Die Corporation/Wedtech Corporation . . . ; E. Robert Wallach; W. Franklyn Chinn; and/or Financial Management, Inc." This section of the Report details the independent counsel's investigation of the financial relationships and dealings among Mr. Meese, Mr. Chinn and Mr. Chinn's corporation, Financial Management International, Inc.

The independent counsel investigated the question whether Mr. Meese improperly received anything of value, directly or indirectly, through the investment activities of a limited partnership, known as Meese Partners, which he and his wife formed with Mr. Chinn.

The evidence shows that Mr. Chinn may have engaged in questionable trading practices, and that the Meese Partners accounts may have been managed by him in a slightly preferential manner. However, while Mr. Chinn's investment services to Mr. Meese may have been unusual, there is no evidence that Mr. Meese illegally or improperly benefited from them. Moreover, there is no evidence that Mr. Meese knew of

any preferential treatment arising from Mr. Chinn's management of Meese Partners, nor is there any evidence of a connection between Mr. Chinn's management of Meese Partners and the Wedtech Corporation.

**I. THE ESTABLISHMENT OF THE INVESTMENT RELATIONSHIP
BETWEEN MR. AND MRS. MEESE AND MR. CHINN**

A. Mr. Wallach Meets Mr. Chinn and Dr. London

Dr. Rusty Kent London was born Irving Lobsenz on January 19, 1943. During the times relevant to this Report, Dr. London resided in Honolulu, Hawaii, and San Francisco, California. He conducted his business through two California corporations domiciled in Hawaii: International Financial Consulting and Investments, Inc., and National Consulting and Management, Inc. The Wedtech officers who cooperated with the office of independent counsel reported that Dr. London gave up the practice of medicine to devote his energies to gambling and investing.

Commencing in or about September 1983, Dr. London rented Mr. Wallach an apartment in San Francisco directly beneath Dr. London's apartment. Mr. Wallach filed a civil action on June 8, 1984, against Pan American Airways on behalf of Dr. London, and represented Dr. London through 1984 until the action was settled. As a result of those contacts, Mr. Wallach and Dr. London formed a social relationship.

During the summer of 1984, Mr. Wallach referred at least one of Dr. London's ideas on national economic policy to

Mr. Meese, and also introduced Dr. London to Mr. Meese. On August 17, 1984, Dr. London sent his "brief" on the subject of a national sales tax to Mr. Meese's Deputy, Bruce K. Chapman, at the White House. Dr. London's cover letter stated that Mr. Wallach had asked him to send the memorandum. On August 28, 1984, Mr. Wallach met Dr. London in Washington, D.C. They had lunch at the White House with Mr. Chapman, and met with Mr. Meese after lunch.

In December of 1984, Dr. London introduced Mr. Wallach to his friend and business associate, Wayne Franklyn Chinn. Mr. Chinn, a naturalized citizen of the United States, was born in Shanghai, China on February 16, 1942.

B. Mr. Chinn's Money Management Background

Mr. Chinn's experience as a money manager dates from his business association in the 1970s with his former wife. They conducted business under the names WFC Investments and American Middle East. During that period, Mr. Chinn managed investments for Overseas Investment Trust, an entity domiciled in the Grand Caymans. Mr. Chinn reportedly told one of the Wedtech officers that during the 1970s he managed \$1 billion for certain individuals living in the Middle East. Mr. Chinn claimed that he doubled this amount during the time of his management, and received fees of \$200 million.

In 1978, Mr. Chinn became involved in two investment partnerships with David H. Meid, a San Francisco, California securities broker. Mr. Chinn was first a limited partner and trader for a partnership known as Hillsborough Partners. Mr. Chinn then participated with Mr. Meid in Dynasty Partners, and succeeded Mr. Meid as the investment manager for Dynasty Partners when Mr. Meid gave up the management of the account. Mr. Meid then became Mr. Chinn's broker at the firm of Bear, Stearns & Co. (Bear, Stearns).

As Mr. Chinn's broker and former partner, Mr. Meid was familiar with Mr. Chinn's investment strategies. Mr. Meid testified before the grand jury [

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] Rather than purchasing securities and holding them with the hope of profiting from their appreciation over time, Mr. Chinn attempted to profit from the increase in the value of securities in a single day. Mr. Chinn pursued this strategy by investing principally in new offerings of securities sold to the public by underwriters. New issues provided Mr. Chinn with opportunities for large day trading profits not as readily available from the purchase and sale of securities already being traded on the public trading markets.

As indicated above, when Mr. Chinn invested in new public offerings, he sold the securities immediately after their purchase. It is a practice of underwriting firms

participating in the sale of a public offering simultaneously to purchase shares in the public securities markets if such purchases are necessary to maintain orderly trading and to complete the sale of an entire offering. A purchaser of new issues, who immediately sells the securities, takes advantage of the higher price that often results from such purchases by underwriters. The practice of buying and selling new issues on the first day of trading is referred to disparagingly by some securities industry professionals as "flipping."

From 1979 through 1983, when Mr. Meid was Mr. Chinn's broker, Mr. Meid was under the impression that

[**GRAND JURY MATERIAL DELETED**

] Mr. Chinn met Mr. Wallach during this period of relative inactivity.

Mr. Chinn's principal known customer since 1980 has been a small college, now named Marymount College, located near Los Angeles, California. In 1980, Mr. Meid introduced Mr. Chinn to officials of the college, then named Marymount Palos Verdes College, and asked Mr. Chinn to consider placing a portion of the college's funds into speculative investments, under Mr. Chinn's management, in order to increase the college's endowment.

On January 13, 1982, Mr. Chinn formally incorporated his investment management activities under the name of

Financial Management International, Inc. (FMI). On August 19, 1982, Marymount Palos Verdes College and FMI entered into a limited partnership under the name of MPVC Partners.

The other principal entity through which Mr. Chinn conducted investments during this period was the Essie E. Chinn Trust, which was established for the benefit of his mother. Between 1980 and 1984, Mr. Chinn managed investments for MPVC Partners and the Essie E. Chinn Trust, first as a sole proprietor and thereafter through FMI.

After February 17, 1984, for reasons not learned during this investigation, Mr. Chinn ceased active securities trading for almost a year on behalf of the accounts he had managed. During the interim, Mr. Chinn invested the funds committed to his care by MPVC Partners in government securities.

In December of 1984, when Mr. Chinn met Mr. Wallach, FMI conducted its business from two adjoining apartments on the sixth floor of a residential apartment building at 1221 Jones Street in San Francisco. One apartment, an efficiency, was used as an office by Mr. Chinn and his three employees. The other one-bedroom apartment was used as Mr. Chinn's private office and as one of his residences.

**C. Mr. Chinn and Mr. Wallach Form
Business Relationships**

Soon after his introduction to Mr. Wallach, Mr. Chinn resumed operations of his investment management

business. On December 18, 1984, Mr. Chinn signed a partnership agreement with Mr. Wallach to form ERW Partners.

The \$300,000 received by Mr. Wallach from Wedtech on October 26, 1984, was used to fund the partnership. Between November 5, 1984, and January 7, 1985, the funds were invested by Mr. Wallach in short-term municipal bonds.

On January 8, 1985, Mr. Chinn deposited Mr. Wallach's \$300,000 in a brokerage account opened for ERW Partners at Bear, Stearns, and invested the funds in an affiliated money market fund.

At the beginning of 1985, Mr. Chinn indicated to colleagues that he expected to be associated with Wedtech. On January 23, 1985, Mr. Chinn resumed trading activity for MPVC Partners by purchasing Wedtech common stock, which the account thereafter held. In addition to his investment management accounts, Mr. Chinn subsequently managed individual accounts in the names of Mr. Wallach, Richard M. Biaggi, Bernard G. Ehrlich, and the Wedtech Corporation, which were used exclusively for investments in Wedtech common stock.

Mr. Chinn resumed his investment activities with purchases of Wedtech securities shortly before he himself became actively involved with the company. Mr. Wallach introduced Mr. Chinn and Dr. London to Wedtech officers during the week of April 15, 1985. He told the Wedtech officers that Mr. Chinn and Dr. London could provide financial consulting services to Wedtech including efforts to increase the value of

Wedtech common stock. Although Mr. Wallach described Messrs. Chinn and London as money managers for highly placed individuals in the Reagan Administration, the only highly placed public figure that Mr. Chinn is known to have represented at any time is Mr. Meese.

On April 30, 1985, the Board of Directors of Wedtech voted to retain Mr. Chinn and Dr. London as consultants. On that same day, Wedtech entered into stock option agreements with Mr. Chinn and Dr. London.

During the first three months of trading activity, from January 23, 1985, through April 30, 1985, ERW Partners made 11 day trades in new offerings for a profit of \$12,869. In addition, \$1,000 was deposited to the ERW Partners account on April 10, 1985, from the Hong Kong bank account of Shun Loong-Bear Stearns, Ltd., the Hong Kong affiliate of Bear, Stearns. The principal invested in the ERW Partners account earned interest of \$7,117 through April 30, 1985, on money market investments. Thus, for the period ending April 30, 1985, ERW Partners earned \$20,986 for an annualized rate of return of 21.6 percent.

D. Mr. Wallach Recommends Mr. Chinn to Mr. Meese

During Mr. Meese's confirmation hearings in January 1985, for the position of Attorney General, several Senators expressed concern about the appearance created by certain financial transactions in which Mr. and Mrs. Meese had engaged. In response, Mr. Meese told the Senate Committee

that he would be sensitive to and avoid any appearance of conflicts of interest or other questionable practices: "I would take great pains to avoid any kind of situation or circumstance that might give rise to a misunderstanding or a misinterpretation of my acts or what I intended."

Sometime before April 12, 1985, Mr. Wallach suggested to Mr. and Mrs. Meese that they retain Mr. Chinn as a money manager to invest the proceeds from the sale of their securities. On April 12, 1985, Mr. Wallach sent Mr. Meese a copy of a proposed limited partnership agreement for an investment partnership, Meese Partners, in the standard form previously used by Mr. Chinn for MPVC Partners and ERW Partners.

Mr. Meese testified before the grand jury that, before he retained Mr. Chinn, Mr. Wallach informed him that Mr. Chinn's investments for Mr. Wallach had resulted in a return in excess of 20 percent. Mr. Meese was under the impression that Mr. Wallach had a longstanding investment relationship with Mr. Chinn. Mr. Meese made no investigation of Mr. Chinn; his sole source of information was Mr. Wallach.

Mr. Meese also testified that, at some time before the formalization of the Meeses' partnership relationship with

Mr. Chinn, Mr. Wallach told Mr. Meese that Mr. Chinn was a business consultant to Wedtech.^{136/}

The Meese Partners limited partnership agreement provided that Mr. Chinn's investments on behalf of Meese Partners:

may from time to time involve investment and trading techniques generally considered aggressive, such as the buying and selling of options; investment of the entire portfolio temporarily in a single industry or security; and a frequency of portfolio turnover far beyond what might be considered normal in the discretionary accounts of brokers and investment advisors.

Notwithstanding that language, Mr. Meese told the office of independent counsel that he did not believe his investment arrangement with Mr. Chinn involved risk or speculation. Mr. Meese testified that Mr. Chinn indicated that the investments might yield an annual return of from 10 to 20 percent.

Mr. Meese also testified about his understanding of Mr. Chinn's situation at the time of the formation of Meese Partners. Mr. Meese understood that, after having earned a substantial fortune, Mr. Chinn had become "semi-retired."

^{136/} On August 13, 1985, Mr. Chinn became a director of Wedtech. Mr. Meese has publicly stated, however, and also informed the office of independent counsel, that he was unaware of Mr. Chinn's position on the Wedtech Board until it was reported in the press in late 1986 or early 1987.

Mr. Meese also understood that Mr. Chinn conducted business in a residential apartment building not generally used by businesses. It was Mr. Meese's impression that Mr. Chinn was not seeking additional clients at the time. It also was his understanding that Mr. Chinn did not usually represent customers with portfolios in the financial range of the Meeses' portfolio. Mr. Meese testified that Mr. Chinn took him and his wife as customers "probably because Mr. Wallach asked him to."

The Meeses did not consider any alternatives for the investment of their assets. During his grand jury testimony, Mr. Meese explained that: "I relied essentially on Mr. Wallach's representations, and Mr. Wallach also discussed it with my wife, and she was very well-satisfied."

Mr. Meese also testified that:

We were kind of grasping around to do something quickly and easily because of all the other demands on my time. And when Mr. Wallach suggested this, and then he talked with my wife about it, this sounded like a very good idea because it would relieve us of the burden of having to dispose of the stocks, having to figure out where to put the money, and also, as Mr. Wallach had indicated, it would probably be a very reasonable return on our money.

E. Establishment of Meese Partners

The commitments undertaken by Mr. Meese during the confirmation process, following his appointment as Attorney General, required that, by May 24, 1985, he take certain

actions relating to his securities.^{137/} Effective May 23, 1985, Mr. Meese executed a limited partnership agreement with FMI for Meese Partners. FMI was the general partner with full authority to act for the partnership, including full discretion to effect transactions, but with no obligation to make a cash contribution. In return for Mr. Chinn's services as a money manager, FMI was entitled to receive a fee to be calculated quarterly. The agreement provided that FMI would receive as its fee the greater of either one-fourth of one percent of the net worth of the partnership at the close of each quarter or 20 percent of the partnership profits during the quarter.

Mr. Meese publicly described his investment arrangement with Mr. Chinn as a "limited blind partnership." However, Mr. Meese did not seek to qualify the investment

^{137/} The telephone records for the Office of the Attorney General reflected that Mr. Meese tried unsuccessfully to telephone Mr. Chinn on May 23, 1985. On May 24, 1985, Mr. Meese sent Mr. Chinn a document titled "Transfer of Property," which purported unilaterally to transfer to Mr. Chinn the interests of Mr. and Mrs. Meese in the seven regional Bell operating companies. A handwritten cover note from Mr. Meese indicated that Mr. Meese had been unable to reach Mr. Chinn by telephone to discuss the document. At the time that Mr. Meese executed this document, he also circulated within the Department of Justice a recusal policy which stated that he had disposed of those interests. The Transfer of Property document is discussed in Part Three of this Report.

arrangement as a "qualified blind trust" under Section 202 of the Ethics in Government Act of 1978.^{138/}

On May 22, 1985, the day before the execution of the Meese Partners agreement, Mr. Chinn opened two brokerage accounts at Bear, Stearns, one in the name of Edwin and Ursula Meese; the second in the name of Ursula Meese. Securities of 19 companies were deposited with Bear, Stearns and credited to one or the other of the accounts; the securities of one additional company arrived shortly thereafter. The securities were sold between May 23 and June 17, 1985. The proceeds of the sales, \$54,581, were invested in money market funds until Mr. Chinn opened a brokerage account on July 10, 1985, in the name of Meese Partners. Mr. Chinn later transferred the proceeds to the Meese Partners account.

II. INVESTMENT BY MR. CHINN OF CUSTOMER ASSETS TO MAXIMIZE HIS MANAGEMENT DISCRETION

Mr. Chinn's investment techniques and activities are discussed in detail below. In sum, it appears that his investment strategy gave him maximum control of the distribution among his customers of proceeds from trades.

^{138/} As described more fully in Part Six of this Report relating to the financial disclosures by Mr. Meese for 1985 and 1986, the Ethics in Government Act of 1978 establishes an exception from filing requirements for a "qualified blind trust" which satisfies the specific requirements of the Act and which is approved in advance by both the employing agency and the Office of Government Ethics.

Mr. Chinn did not pool his clients' funds in one account; instead, he maintained separate accounts for each customer. To a large extent, each of the customers shared the common investment opportunities available to Mr. Chinn, but the proceeds of those opportunities were not divided on a pro rata basis among Mr. Chinn's customers. As a result of Mr. Chinn's trades in new issues, his clearing arrangements, and the traditional securities settlement rules, he was able to select the customer account to be credited with the proceeds of a purchase and sale transaction after he knew the result of the transaction.

Moreover, because of his regular participation in the underwriting markets, the arrangements he established to process his trades, and the use of day trades in new offerings, Mr. Chinn was able to maximize the profits of his own firm as well as the profits of his customers. At the same time, Mr. Chinn maximized his own discretion to distribute profits and losses to his customers.

As set forth in detail below, the office of independent counsel has concluded, based on Mr. Chinn's known transactions, that he may have effected trades in violation of the "free riding" provision of the margin rules of the Federal Reserve Board. In addition, the independent counsel has discovered evidence that, in certain large transactions, Mr. Chinn may have used his market position to obtain discounts in the form of concealed commission rebates which he

may have transferred to offshore accounts. This ability to generate offshore funds through investment activities for others may have provided Mr. Chinn with an incentive, in addition to his management fees and trading income, to engage in his personal investment management business. It may also have provided him with a discretionary fund to use when his securities trading was not successful. Mr. Chinn's involvement in the underwriting markets also provided him with access to investment banking firms which he may have attempted to use for the benefit of Wedtech.

While Mr. Chinn appears to have engaged in a complicated series of transactions for the benefit of his customers and Wedtech, as well as for his personal profit, there is no evidence that Mr. Meese benefited markedly out of proportion to Mr. Chinn's other investment customers, or that Mr. Meese had any knowledge of Mr. Chinn's complex arrangements and techniques.

A. By Engaging in Day Trades in Offerings and Effecting the Trades Through Central Clearing Accounts, Mr. Chinn Maximized His Discretion to Direct Profits to Selected Accounts

At the time he established Meese Partners, Mr. Chinn maintained a brokerage account at Bear, Stearns in the name of each of his customers. Each such account served as a central account for the customer's investments and transactions. The central accounts were known as "clearing accounts." They were

used by Mr. Chinn to process all transactions effected for his customers.

In October 1985, Mr. Chinn opened second clearing accounts at the Imperial Trust Company (Imperial Trust) in San Francisco for his firm and his three most active accounts, including Meese Partners. Mr. Chinn thereafter principally processed transactions through the Imperial Trust accounts.

The customers' funds maintained by Mr. Chinn in the clearing accounts at Bear, Stearns and Imperial Trust were invested in money market funds between Mr. Chinn's day trading transactions. As a result of Mr. Chinn's practice of buying and selling securities in one day, his customers' investments, for all practical purposes, were continuously earning interest from money market funds.

As previously stated, Mr. Chinn limited his trading almost exclusively to those securities offered to the public for the first time by the issuer. He purchased securities from numerous underwriters. It was the practice of underwriters to sell each new issue for the offering company to the public at a price which included a sales commission or sales concession as compensation for underwriting services.

As new offerings were being organized for sale to the public, Mr. Chinn's practice was to express FMI's interest in purchasing the securities to his underwriters' contacts who were responsible for distributing the securities. Mr. Chinn often indicated to his contacts that he wanted to purchase

securities for his customers without identifying specific customers. His desires were made known to his contacts before the offering date was finalized or the offering price was established.

The final price for the issue was customarily established after the close of the securities markets on the day before the offering date. Trading in new issues usually began shortly after the opening of the securities markets on the day when trading was first permitted. New issues were regarded as having been bought from the underwriter at the offering price no matter when the orders were actually processed on the first day.

Mr. Chinn's practice was to sell securities so purchased on the first day of trading. That practice took maximum advantage of the demand for the offering, including any purchases made by the underwriters to support the market while the offering was being completed. Also, as a consequence of the immediate sale of the securities, Mr. Chinn immediately knew the net result of each transaction. After the completion of both transactions, Mr. Chinn informed his clearing firm of his specific customer account to be charged with the purchase and credited with the sale.

Mr. Chinn's practice of engaging in day trades allowed his accounts to benefit from securities settlement practices -- the rules governing the procedures for the delivery of and payment for securities. Under traditional

securities settlement practices, a buyer is obligated to pay for the securities within five business days of the purchase. A seller of securities is obligated to deliver on the fifth business day after the sale, and is entitled to receive payment on that day.

Mr. Chinn's practice was to instruct each underwriter from whom he purchased securities to "clear" the transaction through his clearing firm, either Bear, Stearns or Imperial Trust. On that same day, the underwriter recorded a sale to Mr. Chinn. The underwriter delivered the securities to Mr. Chinn's accounts at the clearing firm, and looked to the clearing firm for payment from Mr. Chinn's accounts five days later on the settlement day.

Mr. Chinn's practice was to place an order at the beginning of trading for the resale of the same securities through a broker other than the underwriter. Mr. Chinn directed that those resales be cleared through the same clearing firm used for the purchase of the securities. The selling brokerage firm looked to the clearing firm to deliver the securities on the settlement day, and, on that same day, conveyed payment from the final purchaser to the clearing firm.

Mr. Chinn also informed the clearing firm of his purchase and sale transaction during the day of the trade. With respect to trades cleared through Bear, Stearns, Mr. Chinn, at the time he notified Bear, Stearns of the trade,

specified which of his customers' accounts was to receive and pay for the securities. After establishing his arrangements with Imperial Trust, Mr. Chinn was able to allocate the proceeds of a trade among his accounts as late as the close of business on the day after the trade occurred.

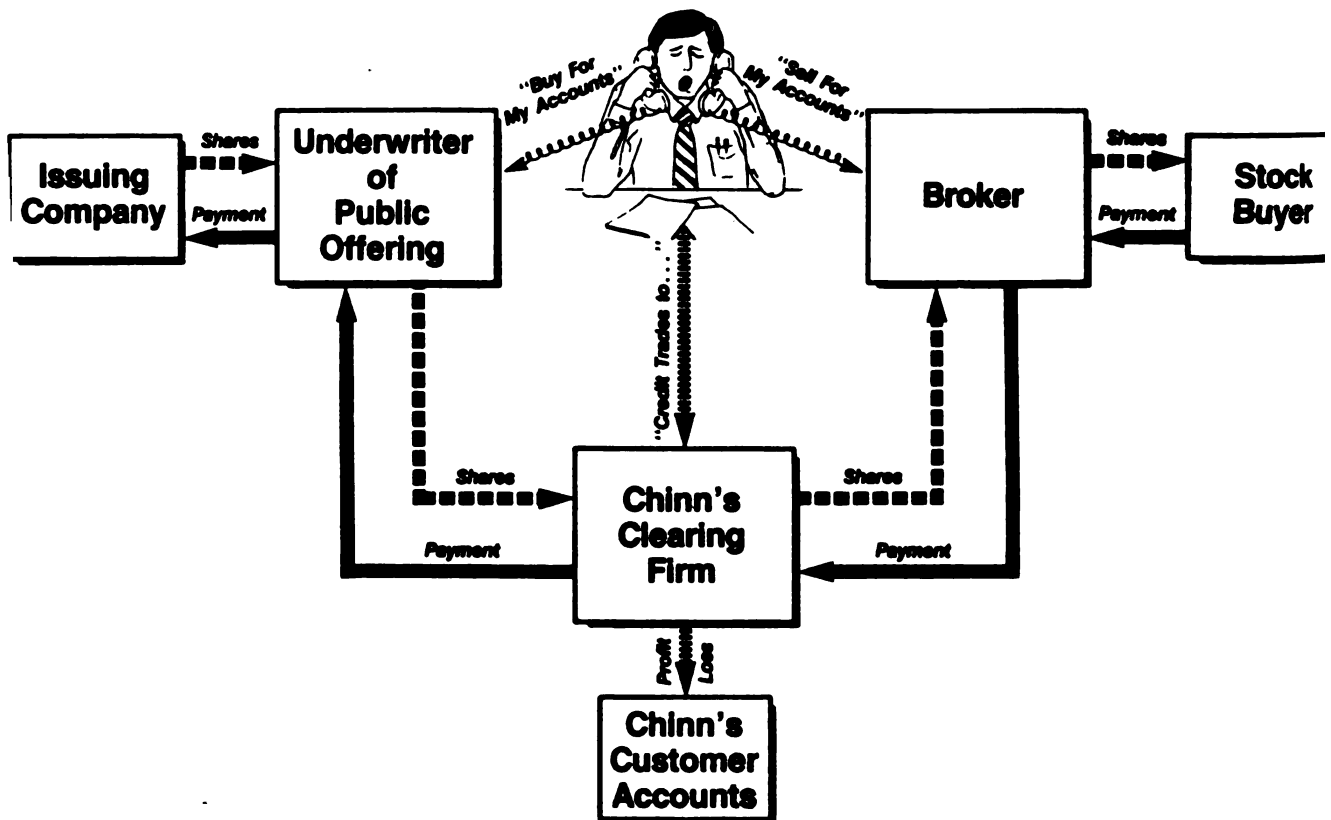
In short, on settlement day, as a result of Mr. Chinn's order, the securities purchased by Mr. Chinn went first from the underwriter to Mr. Chinn's clearing firm; then to the brokerage firm selected by Mr. Chinn for resale of the securities; and from there to the final securities buyer.

Simultaneously, the final buyer's purchase money went in the other direction: first to the brokerage firm selected by Mr. Chinn; then to Mr. Chinn's clearing firm; and, finally, to the underwriter.

The movement of securities produced a wash transaction for Mr. Chinn; the number of shares purchased equalled the number sold. After the sale price was netted against the purchase price, the profit or loss from each trade was transferred into or out of the account credited with the trade on the settlement day. The result was that the account designated by Mr. Chinn for the transaction was credited with any net profit or charged with any net loss.

Mr. Chinn's clearing arrangements thus allowed him to treat his various customer accounts as interchangeable, subject only to the limitation that after the completion of a transaction the account selected for the trade needed to have sufficient funds on the settlement day to pay for any net loss it may have incurred as a result of the transaction.

Chinn's Same Day Trading



**B. Mr. Chinn's Regular Participation and
Apparent Stature Gain Access to
Valuable Investment Opportunities**

**1. Mr. Chinn Endeavored to Participate
Regularly in the Offering Markets**

The profitability of day trading depends upon the ability to purchase offerings which may be sold at a profit on the first day of trading. A new issue is considered "hot" if trading in the security in the secondary trading market takes place immediately at a price higher than the initial price of the securities. In order to obtain trading profits through day trades, Mr. Chinn needed to purchase shares in "hot issues," which are in great demand.

Mr. Chinn and his staff maintained regular contacts with individuals involved with the sale of new offerings at underwriting firms in San Francisco and throughout the United States. The underwriting firms usually maintained an underwriting calendar which reflected the issues expected to be marketed in future months. Information about the particular company issuing the securities, as well as an estimate of the price range at which the offering might be made, was contained in a preliminary prospectus circulated by the underwriter.

Mr. Chinn's employees followed the underwriting calendars of many firms through his contacts in the brokerage community. They kept careful track of future offerings that might be of interest to Mr. Chinn. Mr. Chinn reviewed the

information gathered by his staff, and determined whether or not to participate in the offerings.

After Mr. Chinn decided that he was interested in a particular offering, he communicated his interest and the number of shares he desired to purchase to his contact at the underwriting firm. The underwriting firm then informed Mr. Chinn of the number of shares available for him to purchase. That communication from the underwriter was known as "circling" the amount of shares Mr. Chinn was to purchase. After Mr. Chinn was circled by an underwriter with respect to a forthcoming offering, he confirmed his purchase on the day the offering was issued to the public.

The evidence shows that Mr. Chinn was willing to participate regularly in less desirable offerings. Mr. Chinn thus was known at many underwriting firms as a "regular calendar player," someone who could be relied upon to purchase interests in many offerings, including those not in great demand.

2. The Profitability of Mr. Chinn's Trading Depended on His Opportunity to Invest in Hot Issues

Underwriting firms often receive more requests for shares of hot issues than they can deliver. In those circumstances, the underwriters determine which customer will receive shares as well as the number of shares each customer will receive. This is done by allocating shares among potential buyers based on the determination of the buyer's

importance to the underwriting firm. Mr. Chinn's status as a regular calendar player qualified him to participate in a number of hot issues.

In situations when there were an insufficient number of shares of a hot issue to satisfy demand, prospective purchasers would lobby the underwriting firms in an effort to maximize their portion of the offering. Mr. Chinn took every available step to obtain as many shares as possible of hot issues.

3. Mr. Chinn's Clearing Arrangements and the Nature of His Clients Facilitated His Ability to Purchase Hot Issues

Underwriters offering new issues prefer to sell to individuals who will hold the securities as an investment for some period of time. Mr. Chinn's practice, after purchasing securities, of having them delivered to a clearing firm while effecting their resale through a different firm, enabled him to conceal his day trades from underwriters. Each underwriter knew only that Mr. Chinn had purchased offerings through an account at the clearing firm.

The identities and nature of Mr. Chinn's customers -- a college, a trust and two individuals not known to be professional investors -- gave the impression to underwriters that Mr. Chinn's clients were investors who would hold shares for a substantial period of time. The evidence indicates that employees of Mr. Chinn once or twice mentioned to underwriters that Mr. Meese was one of Mr. Chinn's customers as a means of

establishing Mr. Chinn's clientele as appropriate purchasers of new issues. However, there is no evidence of any effort by Mr. Chinn to identify himself with Mr. Meese in order to be able to purchase hot issues for Mr. Meese's account or any other account.

C. Mr. Chinn Attempted to Use His Status in the Underwriting Markets on Behalf of Wedtech

From April 1985, through at least July 1986, Mr. Chinn and Dr. London were involved in efforts by Wedtech to complete an offering of common stock and an offering of corporate bonds through the public securities markets. According to witnesses, Mr. Chinn attempted to use his contacts with underwriting firms for the benefit of Wedtech. He suggested to his contacts in at least two firms that their firms underwrite Wedtech securities. The evidence indicates that Mr. Chinn's purchases of new offerings for his customers' accounts may have assisted him in maintaining contacts with underwriters useful to Wedtech.

D. Mr Chinn May Have Structured Certain Of His Purchases in Offerings in a Manner That Enabled Him to Share in the Underwriters' Compensation

The investigation by the office of independent counsel disclosed that in the course of his day trading Mr. Chinn arranged a complicated series of transactions in order to receive the benefit of underwriting sales commissions which underwriters were willing to share with institutional customers.

It appears that Mr. Chinn established a complex procedure for passing portions of the underwriters' compensation paid on the purchases for his customers' accounts through a series of brokers until payments were returned, through a series of bank accounts, to Mr. Chinn's apparent control. The evidence indicates that the payments so obtained by Mr. Chinn were transferred from the United States to accounts in Hong Kong where they were apparently available to Mr. Chinn for his personal use. By way of this convoluted chain of transactions, Mr. Chinn appears to have obtained a substantial personal benefit from his customers' participation in underwritings, including day trades that were unprofitable.

As a result of his participation in the underwriting markets from 1985 through 1987, Mr. Chinn may have received more than \$1 million in commission income that was transferred to foreign accounts.^{139/} The office of independent counsel,

^{139/} To the extent that Mr. Chinn actually received funds derived from transaction commissions without disclosing to his customers that he was obtaining additional compensation in connection with transactions on their behalf, he may have engaged in fraudulent securities transactions. No evidence has been found indicating that Mr. Chinn disclosed this commission income to any of his customers, or that he received permission from any customer to retain the commission income as a part of his compensation. Moreover, Mr. Chinn's actions may evidence efforts on his part to hide substantial sums of money in Hong Kong accounts, where the money was reported as investments in Hong Kong gold contracts. Such actions could violate the laws of Hong Kong which prohibit false accounting
(Footnote Continued)

aided by close cooperation from the criminal authorities of Hong Kong, conducted as thorough an investigation of these transactions as was possible under the circumstances. The investigation has produced no evidence that Mr. Meese received any improper benefit from any funds that Mr. Chinn may have controlled outside the United States.

1. **Mr. Chinn's Regular Substantial Participation in New Offerings Gave Him The Ability to Direct Compensation to Brokers**

As a result of Mr. Chinn's regular purchases of large amounts of new issues, he was regarded as an "institutional" client. This status enabled Mr. Chinn to purchase large amounts of securities in certain offerings from the "institutional pot," a block of the securities that was set aside from the portion of the offering distributed by individual underwriters.

There were two immediate benefits from being able to buy from the institutional pot. The first benefit was that very large blocks of securities may be available for purchase only from the institutional pot. The second benefit of buying from the institutional pot was that the purchaser had the ability to "designate" or select a particular broker in

(Footnote Continued)

practices. It should also be noted that the books of FMI and its tax returns do not appear to report properly this apparent revenue.

securities brokerage firms as the selling broker for a portion of the purchase. This "designated" broker, who was credited with the transaction, received the commission from it.

The usual practice of the managing underwriters of new offerings in which Mr. Chinn participated was to require that at least one-half of Mr. Chinn's purchase from the institutional pot be made from the underwriter which arranged his participation in the offering. Mr. Chinn could direct, by his designation, that the remainder of the purchase be made from a securities brokerage firm of his choice.^{140/} The firm selected by Mr. Chinn was then credited on the books of the managing underwriters as the seller, and was paid the sales commission on the sale of those shares to Mr. Chinn's clients. By his designation, Mr. Chinn was thus able to direct compensation to selected brokerage firms.

This practice, known in the trade as the "designation" of a broker, is an accepted means for an investment adviser or large institutional client to compensate a broker for advice, analysis, research or other services, by directing commission business to the broker. In the ordinary course, the broker who receives the sales commission from the

^{140/} The managing underwriters sometimes limited the brokers to whom an institutional customer could designate transactions. Often it appeared that the firms which could be designated were limited to those which also participated in underwritings, and were, therefore, likely to offer reciprocal opportunities to the managing underwriters.

designation keeps the funds as compensation for the other services being provided to the money manager or institutional client responsible for the designation.

A broker may choose to return all or a portion of a designated commission to the client who makes the designation. The broker's discretion to return part of a transaction fee to a money manager does not alter the fiduciary duty of the money manager to report transactions accurately to the money manager's customers, and to account to the ultimate customers for the income and expenses from each managed transaction. In ordinary circumstances, the money manager's customer may be entitled to the benefit of any discount earned from the rebating of designated commissions.

During 1985, 1986 and 1987, Mr. Chinn had the status of an institutional client for underwritings managed by Goldman, Sachs & Co., Salomon Brothers and other major underwriting firms. Mr. Chinn acquired this status as a result of his willingness to participate regularly and substantially in the offerings of securities through those firms. With respect to those offerings he purchased from the institutional pot, Mr. Chinn was able to designate substantial sales commissions to other brokers.

The independent counsel's investigation of these arrangements disclosed that Mr. Chinn arranged to take back, through commission "rebates," the majority of his designated

commissions for certain offerings. This arrangement may have provided Mr. Chinn with a means to profit personally from the transactions of his customers. However, there is no evidence that any commission rebate arrangement was used improperly to benefit Mr. and Mrs. Meese.

2. Mr. Chinn Directs Commissions to Certain Foreign Associates

Mr. Chinn arranged to have institutional pot stock commissions designated for three individuals who were registered as "foreign associates" of United States securities firms. A foreign associate is an individual living outside the United States associated with a United States securities firm, and permitted to engage in certain transactions through that firm. As a result of Mr. Chinn's designation, the commission income from Mr. Chinn's institutional pot stock transactions was credited to one or more of those individuals.

The three persons to whom Mr. Chinn designated his institutional pot stock commissions were Po Yin Chan and Hom Kwong Chan of Hong Kong, and Reginald Stuart, a Malaysian resident of London. Although Mr. Chinn designated commissions to the names of the three individuals, it is believed that he arranged to have the commissions transferred through San

San Francisco bank accounts that he controlled to brokerage accounts in Hong Kong that he used.^{141/}

Each of the three individuals was a foreign associate of a Honolulu brokerage firm, First Honolulu Securities. Whenever he could, Mr. Chinn designated a First Honolulu broker to receive commissions. If he was required to designate a broker at another major underwriting firm, Mr. Chinn usually designated a broker at the Honolulu office of Prudential-Bache Securities, which in turn passed the transaction on to one of the three foreign associates by way of First Honolulu.

First Honolulu was instructed on behalf of the three foreign associates to send checks for the commissions to one of Mr. Chinn's employees. At all relevant times, an employee of Mr. Chinn had a power of attorney over a bank account in San Francisco for each foreign associate. In the ordinary course, Mr. Chinn's employee deposited the commission check in the bank account and caused the commission rebate proceeds to be transferred by wire to Hong Kong or the United Kingdom.

A total of at least \$200,736 was transferred from the San Francisco bank accounts apparently controlled by Mr. Chinn or by one of his employees to bank accounts for the

^{141/} The evidence does not support a conclusion as to whether the three named individuals wittingly or unwittingly participated in any scheme by Mr. Chinn to obtain the commissions.

purported benefit of Reginald Stuart in London, and at least \$884,261 similarly was transferred from San Francisco bank accounts to Hong Kong bank accounts in the names of the two Hong Kong residents. In short, designated commissions for institutional pot transactions, amounting to at least \$1,084,998, appear to have been transferred, between May 22, 1985 through September 14, 1987, through United States bank accounts apparently controlled by Mr. Chinn to offshore accounts related to Mr. Chinn.

Mr. Chinn's apparent continued control of the funds received from those designations is evidenced by transfers to FMI from accounts in Hong Kong and the United Kingdom known to be related to the foreign associates. Records were obtained evidencing the transfer to FMI of \$165,000 from a bank account in London to which the designated commissions initially had been transferred.

In addition to these direct transfers from London, it appears that the designated commissions previously transferred to Hong Kong were returned to Mr. Chinn by reporting fictitious gold transactions. It appears that Mr. Chinn reported profits on those fictitious transactions in order to transfer a total of \$616,400 into the United States from Hong Kong: \$432,800 for FMI and \$183,600 for MPVC Partners. An additional \$208,200 was returned to FMI from Hong Kong in October 1987, after Mr. Chinn's employees were

questioned about the purported gold trades during this investigation.

E. Mr. Chinn Is Alleged to Have Falsely Reported Transactions in Loco London Gold To Account for Designated Commissions and Other Funds Transferred Through Hong Kong

The office of independent counsel received evidence that Mr. Chinn allegedly agreed with Alvin Chan, a Hong Kong broker, to report gold transactions as a means of laundering designated commissions and other money through Hong Kong. The scheme involved reporting gold trades that had not actually occurred as a means of documenting the movement of cash between the United States and Hong Kong.

1. Mr. Chinn Reports Transactions in Securities and Loco London Gold

Mr. Chinn reported transactions purportedly effected in gold through Shun Loong-Bear Stearns Limited, a Hong Kong joint venture conducted by the Hong Kong investment firm of Shun Loong and Bear, Stearns. The purpose of the joint venture was to enable customers other than United States residents to purchase securities through United States securities markets. Mr. Chinn established a relationship with Alvin Chan, an employee of Shun Loong-Bear Stearns Limited who resided in Hong Kong. Through this relationship, Mr. Chinn purchased issues in United States securities offerings that were underwritten by Bear, Stearns and were available in Hong Kong through Shun Loong-Bear Stearns Limited.

In addition to securities transactions for his customers' accounts, Mr. Chinn also reported transactions in "Loco London Gold" for the accounts of FMI, MPVC Partners and ERW Partners. In the commodities trade, "Loco London Gold" refers to gold traded through the London gold market. Hong Kong authorities informed the office of independent counsel that in Hong Kong there was a "Loco London Gold" over-the-counter market maintained by Hong Kong firms acting as dealers in gold contracts. The Hong Kong firms agreed to write gold contracts with customers with the understanding that the parties to the contract would thereafter receive or pay the difference between the contract price and the price of gold on the market in the future. By this arrangement, Hong Kong firms that engaged in Loco London Gold transactions with customers speculated with their customers that gold would go up or down by buying or selling contracts for ounces of gold against the market price.

2. Mr. Chinn Is Alleged to Have Agreed with Alvin Chan that Gold Transactions Would Be Falsely Reported in Order to Account For Money Passed Through Hong Kong

According to a former employee of FMI, Mr. Chinn met with Alvin Chan in Hong Kong in 1984 to arrange a means of laundering money from the United States through Hong Kong. At that time, Mr. Chinn is alleged to have met with Alvin Chan and Alvin Chan's father, Po Yin Chan, to arrange a short-lived

means for the transfer of designated commission rebates through Hong Kong to Mr. Chinn.

The former employee described subsequent events in early 1985 when, at Mr. Chinn's request, he went to Hong Kong to deliver some papers to Alvin Chan. While he was in Hong Kong, Mr. Chinn telephoned him and explained a new way to launder commission rebates through Hong Kong. During this conversation, Mr. Chinn offered him a job with FMI, which he later accepted.

In April 1985, according to the former employee, he went to Hong Kong with Mr. Chinn for the purpose of negotiating with Alvin Chan the details of the new arrangement. At the time of this trip, Mr. Chinn was resuming his money management business.^{142/} The proposed laundering arrangement entailed transferring designated commissions in connection with United States securities transactions to Hong Kong and returning this money to the United States as the apparent proceeds of profitable Hong Kong securities trades for the benefit of Mr. Chinn. The former employee recalled a meeting in Hong Kong involving Messrs. Chinn and Alvin Chan at which Mr. Chinn suggested that Po Yin Chan could use his securities firm and his position as a floor trader on the Hong

^{142/} Just before the trip, Mr. Chinn was introduced to Wedtech officers and to Mr. Meese; just afterward he was retained by Wedtech as a consultant.

Kong Stock Exchange to disguise designated commissions as stock trading profits.

It was the former employee's understanding that, after speaking to Po Yin Chan, Alvin Chan told Mr. Chinn that securities transactions could not be used to accomplish this end. Alvin Chan suggested, however, that the same end could be accomplished by way of fake gold transactions that Alvin Chan could effect through his relationship with his firm, Shun Loong-Bear Stearns Limited. Alvin Chan allegedly required a paper trail for the money leaving Hong Kong in order to avoid any Hong Kong income tax obligation. Messrs. Chinn and Alvin Chan agreed on this mechanism, to be evidenced by false transaction documents for the transfer of funds.

3. Mr. Chinn and Alvin Chan Report Loco
London Gold Transactions to Document
Transfers Between Hong Kong and the
United States

To execute this plan, Alvin Chan allegedly documented the transfer of money between Hong Kong and the United States by preparing documents reporting fictitious transactions. As the arrangement was explained to the independent counsel, whenever Mr. Chinn wanted to move money to or from Hong Kong, Alvin Chan was informed of the desired transfer. Alvin Chan followed the gold market until there was a day when, as a result of a sufficient change in the price of gold over the course of the day, plausible day transactions

reaching the desired result could be reported. Alvin Chan reported those "transactions" as actual transactions on false confirmation forms bearing the heading "Loco London Gold," and on statements of account for FMI or an FMI customer which also bore the heading "Loco London Gold." Alvin Chan provided the Loco London Gold documentation to Mr. Chinn, and the money for the transaction moved between the accounts controlled by Mr. Chinn in the United States and Hong Kong accounts.

Transaction documents headed "Loco London Gold" obtained by the office of independent counsel from Mr. Chinn's accountant and the accountant for MPVC Partners do not contain the name of the executing firm, an address or telephone number. These documents appear to be standard, printed forms that had been filed out with transaction details on an ordinary typewriter.

The independent counsel obtained bank records evidencing the transfer of at least \$432,800 into the United States through transactions involving the allegedly false reporting of profitable day trades in Loco London Gold for the account of FMI. In addition, bank records reflected that during 1985 Mr. Chinn reported to MPVC Partners that the partnership had profits of \$99,300 from Loco London Gold transactions.^{143/} These transactions appear to evidence

^{143/} These profits to MPVC Partners compensated that customer
(Footnote Continued)

Mr. Chinn's control of the Hong Kong funds through
Alvin Chan.^{144/}

The former employee described to the office of independent counsel an occasion in November 1986 when Mr. Chinn paid money owing to him by reporting a fictitious \$120,000 gold loss in Hong Kong for the account of FMI, transferring \$120,000 to Hong Kong, and arranging for the employee to receive this money when he traveled to Hong Kong. This November 1986 gold loss was the only loss FMI reported with respect to the 15 day trades in Loco London Gold purportedly effected for the account of FMI.

Mr. Chinn's accountant testified before the grand jury about [

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(Footnote Continued)

for any apparent preferential treatment Mr. Chinn gave to Meese Partners over this time in his distribution of profits from day trading of securities. It appears that Mr. Chinn used the designated commissions transferred to Hong Kong to provide those profits to MVPC Partners.

^{144/} The independent counsel investigated the Loco London Gold transactions and the related handling of designated commissions in part because of the discovery of documents reflecting a Hong Kong Loco London Gold account in the name of Mr. Meese. The evidence relating to small deposits in Meese Partners from the Hong Kong account is discussed in detail hereinafter.

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that the

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Documentary evidence [**GRAND JURY MATERIAL DELETED**

] relating to the false gold transaction

allegedly used to compensate the former employee corroborate the allegation that the Loco London Gold transactions reported on the books of FMI and its customers never in fact occurred.

F. Mr. Chinn Appears to Have Engaged in Profitable Day Trading of Offerings for the Benefit of All His Accounts

Mr. Chinn participated actively in the underwriting markets in 1985, 1986 and 1987, for the benefit of all his accounts, including Meese Partners. It appears that Mr. Chinn structured his accounts and his transactions to maximize his discretion. While Mr. Chinn's fees and trading profits alone do not appear to be sufficient to support his money management business, it appears that he may have used that business to gain opportunities for Wedtech, thus improving his standing with the company.^{145/} At the same time, Mr. Chinn also may have earned substantial sums through commission designations.

^{145/} The independent counsel has examined books and records for FMI maintained by Mr. Chinn's accountant. For fiscal year May 1, 1984, through April 30, 1985, when Mr. Chinn was virtually inactive, money management fee income was \$4,219 and employees' salaries totaled \$26,195. He reported no trading income.

(Footnote Continued)

Thus, it appears that, when Mr. Chinn resumed active money management activities for Mr. Meese, Mr. Wallach and MPVC Partners, he may have been motivated in part by collateral advantages -- his relationship with Wedtech and his control of designated commissions.

III. INCOME EARNED BY MR. AND MRS. MEESE FROM MEESE PARTNERS

Meese Partners was very profitable for Mr. and Mrs. Meese. The office of independent counsel compared Mr. Chinn's management of the Meese Partners accounts with his management of other accounts in an effort to determine whether Mr. Meese received a direct or indirect benefit as a result of preferential treatment. Mr. Chinn's customer accounts cannot easily be compared because he allocated different transactions among them. Although there are indications that Mr. Chinn exercised his discretion so as to favor Meese Partners to a

(Footnote Continued)

For the fiscal year ended April 30, 1986, management fees totaled \$43,600 and employees' salaries amounted to \$89,129. Including securities trading income earned during that fiscal year, FMI's profits appear to have been no more than \$9,453 before the payment of any compensation to Mr. Chinn.

For the fiscal year ended April 30, 1987, net revenues from money management fees and trading income, before employee salaries of \$51,499 and any other expense, amounted to \$33,534.

During the two-year period that Mr. Chinn managed Mr. and Mrs. Meese's funds, total revenues from his money management business were approximately \$222,176, while salary expenses alone, exclusive of Mr. Chinn's salary, amounted to \$140,628.

limited extent, there is no evidence that Mr. Meese knew of any such favored treatment, nor is there any evidence that any such treatment was a quid pro quo for any official act performed by Mr. Meese.

A. Assets and Income of Meese Partners

Mr. Chinn allocated trades to Meese Partners accounts in new offerings in the same manner that he allocated trades to his other customers' accounts. At no time did Mr. Chinn purchase or trade Wedtech securities for the Meese Partners accounts.

Meese Partners earned income from day trades in new offerings and from the money market funds in which funds were invested. With one exception, reflecting one of two small deposits from a Hong Kong account, the assets of Meese Partners are all traceable to the initial contribution from the May and June 1985 sales of Mr. and Mrs. Meese's securities, and the subsequent income earned on that contribution. There is no evidence of any contribution to the Meese Partners accounts by Wedtech or any other third party.

1. Results of Meese Partners Investments

Meese Partners was credited with investments in 23 offerings through day trades during the period from July 26, 1985, through February 11, 1987, when Mr. Chinn actively managed the partnership. The overall net trading profit of the investments credited to the Meese Partners account are as follows:

Meese Partners Investment Income
(by trade date)

Quarter	Net Trading Profit	Rate of Return (Annualized)	Management Fee Paid To Mr. Chinn
1985			
3rd Q	\$ 6,715	52.2%	\$1,626
4th Q	5,638	42.3%	1,252
6 mos. 1985	12,353	47.1%	2,878
1986			
1st Q	4,571	31.8%	904
2nd Q	3,309	21.2%	591
3rd Q	588	3.7%	(82)
4th Q	4,668	28.6%	949
Year	13,136	21.1%	2,362
1987			
1st Q	10,694	60.4%	2,514
Total 1985-1987	\$36,183	34.1%	\$7,754

NOTE: The net trading profit for Meese Partners was calculated as the investment income less investment expenses. This chart limits the calculation to the quarters in which trades occurred. These assumptions permit ready comparison of Mr. Chinn's trading to market indices.

Other expenses of Meese Partners totaling \$5,945 were also paid by Mr. Chinn. These expenses were principally comprised of accountants' fees which totaled \$5,751. If these expenses are included in the calculation, and the money market interest of \$707 earned by the Meeses during the inactive quarter is included, the net return to the Meeses is \$30,943 for an annual overall rate of return of approximately 24.8 percent.

The average annual rate of return for the Meese Partners investments, 34.1 percent, appears to be unusually high. However, three recognized investment indices also increased at high annual rates over the same time period. The Dow Jones Industrial Average increased at an annual rate of 37.9 percent; the Standard & Poors Composite Index of 500 stocks increased at an annual rate of 27.2 percent, and the New York Stock Exchange Composite Index increased at an annual rate of 25.7 percent.

2. Trades by Meese Partners at a Loss

All but five of 23 transactions credited to Meese Partners were investments in hot issues that resulted in profits. The five losing transactions were effected at two different times.

On July 26, 1985, the day of Mr. Chinn's first trades for Meese Partners, the partnership traded Reebok securities for a \$3,750 net profit, and Union Exploration Partners securities at a \$71 net loss. The net profit on the two trades was \$3,679.

The four other losing transactions followed shortly after a \$12,000 profit on a day trade in Biotherapeutics securities on June 17, 1986. The four transactions resulted in aggregate losses of \$8,925 from June 20 through June 26, 1986. The net profit for that ten-day period was \$3,075.

Thus, Mr. Chinn reported to Meese Partners a continuous and substantial series of profitable transactions,

although the account suffered losses on two occasions. The timing of the losses for the Meese Partners accounts immediately after large profits created the appearance that Mr. Chinn allocated trades to insure a consistent return for the Meese Partners accounts.^{146/}

^{146/} This impression is strengthened by the circumstances surrounding the four losses charged to the Meese Partners accounts at the end of June 1986. Those losses occurred immediately before the end of a quarter, but were credited by Mr. Chinn's accountant on the settlement date which, for three of the trades, was in the next quarter. This resulted in a reported profit of \$9,626 for the second quarter of 1986, after payment of accountants' fees, and a \$7,418 loss for the third quarter, the only occasion when Meese Partners reported a loss for a quarter.

A handwritten note from Mr. Chinn's accountant to his staff indicated that Mr. Chinn changed the accounting procedures for the reporting of the successes of this account immediately after the preparation of the quarterly financial statement that reported the \$12,000 gain without reporting all four immediate losses. The new accounting procedure modified the procedure for recognizing losses and gains to insure that losses were recognized on the trade date, and thus sooner than gains, which were recognized on the settlement date.

As indicated, the accountant reported each transaction as of the settlement date rather than the trade date. This resulted in the report of a \$7,418 loss in the third quarter when, if calculated by trade date as proposed by Mr. Chinn for future transactions, only a \$477 loss would have been reported in the third quarter. Meanwhile, under the traditional practice, a profit of \$9,626 was reported in the second quarter when, if calculated by trade date, only a \$2,685 profit would have been reported.

B. Mr. Chinn's Division of Profitable Opportunities Among His Customers

The office of independent counsel has considered whether, by virtue of his complete discretion in distributing profits to his customers, Mr. Chinn may have benefited the Meeses at the expense of his other customers. While the funds of Mr. Chinn's clients were not pooled, his clients did, for the most part, share in common investment opportunities because of Mr. Chinn's ongoing involvement with the investment community. However, of Mr. Chinn's three customers other than his mother and himself, only MPVC Partners was active as a regular investment customer over the period of time that Meese Partners was active. The third customer, ERW Partners, was active only in 1985.^{147/}

^{147/} Mr. Chinn actively traded for ERW Partners only in 1985, with 24 trades from May 1, 1985, through December 31, 1985. By letter to Mr. Wallach dated November 11, 1985, Mr. Chinn waived 1985 fees for the ERW Partners account which amounted to \$6,707 at the end of the year. Mr. Chinn effected only two trades for the ERW Partners accounts after December 4, 1985, one transaction that resulted in a \$1,550 profit on March 12, 1986, and one transaction on August 19, 1986 that resulted in neither profit nor loss.

During 1985 and 1986, as discussed in Part One of this Report, Messrs. Chinn and Wallach also allegedly engaged in a number of questionable financial transactions in which Mr. Wallach may have received undisclosed payments or payments supported by allegedly false documentation through Mr. Chinn and Dr. London.

1. Comparison of Meese Partners Assets with
Assets of Other Accounts Managed by
Mr. Chinn

As of July 26, 1985, when he began trading for Meese Partners, Mr. Chinn actively represented five investment customers. These were: MPVC Partners with assets of \$338,273; ERW Partners with assets of \$328,737; Meese Partners with assets of \$50,587; the Essie E. Chinn Trust with assets of \$14,073; and an FMI account with assets of \$85,892. The Meese Partners assets, thus, represented approximately six percent of the total assets managed by Mr. Chinn at that time.

The total assets of all of the accounts managed by Mr. Chinn at the opening of the first Meese Partners clearing account on July 26, 1985, amounted to \$817,562. On March 30, 1987, the close of the last quarter prior to the termination of Meese Partners, the total asset figure was \$748,637, a reduction of \$68,925. The total amount in the accounts under Mr. Chinn's management ranged from a low of \$664,062 on February 11, 1987, to a high of \$1,365,161 on March 30, 1986.

The Meese Partners assets increased from \$50,587 on July 26, 1985, to a peak of \$74,941 at the time of last trade on February 11, 1987. The Meese Partners asset balance rose fairly consistently, and ranged from approximately five to 10 percent of the total assets managed by Mr. Chinn.

**2. Opportunities Were Not Equally Divided
Among Mr. Chinn's Customers**

From July 26, 1985, through February 11, 1987, Meese Partners was credited with transactions in 23 offerings; MPVC Partners was credited with transactions in 444 offerings. ERW Partners was credited with transactions in 19 offerings, 17 in 1985 and two in 1986. The two accounts in which Mr. Chinn had a personal interest, the FMI account and the Essie E. Chinn Trust account, engaged in 54 and 17 transactions respectively.

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In the absence of Mr. Chinn's testimony, the office of independent counsel, in an effort to determine the basis for Mr. Chinn's discretionary decisions, examined all of his transactions from the formation of Meese Partners on May 23, 1985, through June 30, 1987. However, the office of independent counsel was unable to conclude that Mr. Chinn allocated his trades on the basis of any readily apparent system.

The simplest method to accord equal treatment to each of the accounts would have been to divide profits and losses by the percentage of the total assets managed for each customer. Mr. Chinn did not follow that procedure. Many

transactions involved only one customer; many others were not allocated on a percentage of assets basis. Of the 23 transactions involving Meese Partners, six were credited only to Meese Partners, while only two were credited to all five accounts. MPVC Partners participated in 16 of the 23 transactions in which Meese Partners participated. During the period that Mr. Chinn traded for Meese Partners, Meese Partners participated in five of the 10 most profitable offerings sold to Mr. Chinn, while participating in only one of the 10 largest losses. MPVC Partners participated in each of the 10 most profitable and the 10 least profitable transactions.^{148/}

^{148/} The rules governing the distribution of offerings may prevent an investment adviser from simply dividing interests in offerings of securities equally between all customers at all times. Some issues are only qualified for sale in certain states. For example, one particularly profitable transaction for Meese Partners, the purchase of shares of Biotherapeutics on June 17, 1986, which resulted in the previously described net profit of \$12,000, apparently was available only to Meese Partners. According to Mr. Chinn's former employee, that hot issue could not be sold to residents of California. Meese Partners was a resident of Virginia. Mr. Chinn's other four accounts were residents of California.

Moreover, under the policies of at least some underwriters with whom Mr. Chinn dealt, a money manager could not buy a hot issue for his own account; he could buy it only for the accounts of his customers. Mr. Chinn therefore could not put shares of hot issues purchased from such underwriters in the FMI account. Some firms even prohibited a money manager from putting proceeds from hot issues in a related account, such as the account Mr. Chinn managed for the benefit of his mother. Mr. Chinn therefore was restricted in dealing with any such firm to allocating the profits or losses from

(Footnote Continued)

**3. Comparison of the Results of Trading for
Mr. Chinn's Managed Accounts Evidences
That Meese Partners Did Not Receive A
Better Overall Return**

An analysis of the quarterly returns provided by Mr. Chinn to the customer accounts shows that MPVC Partners earned the highest rate of return of Mr. Chinn's three third-party accounts during the period of time that the Meese Partners investment accounts were active. However, this return resulted from two transactions at the very end of the last quarter in which Meese Partners engaged in trades. On March 25, 1987, MPVC Partners earned \$17,375 on the trading of Xylogics, Inc., and \$100,066 on the trading of Consolidated Rail Corporation securities, for a total profit of \$117,441. Until that date, which was over a month after the last transaction for Meese Partners, Meese Partners had an overall net rate of return of 34.1 percent compared to 28.1 percent for MPVC Partners.

(Footnote Continued)

the transactions in hot issues to his arm's-length customers: Meese Partners, ERW Partners and MPVC Partners.

Overall Income

	<u>Meese Partners</u>		<u>MPVC Partners</u>		<u>ERW Partners</u>	
	Profit	Rate of Return (Annualized)	Profit	Rate of Return (Annualized)	Profit	Rate of Return (Annualized)
3rd Q	\$ 6,715	52.2	\$ 6,671	5.9	\$ 1,061	1.5
4th Q	5,638	42.3	59,522	43.6	21,020	42.4
6 mos. 1985	12,353	47.1	66,193	26.4	22,081	18.3
<u>1986</u>						
1st Q	4,571	31.8	41,762	27.5	3,394	12.4
2nd Q	3,309	21.2	19,868	12.7	1,503	6.7
3rd Q	588	3.7	46,488	29.2	1,244	6.9
4th Q	4,668	28.6	52,940	36.2	72	1.4
Year	13,136	21.1	161,058	26.3	6,213	8.5
<u>1987</u>						
1st Q	10,694	60.4	\$171,775	124.1	376	7.2
Total <u>1985-1987</u>	\$36,183	34.1	\$399,026	39.8	\$28,670	14.4

NOTE: The profits as calculated in this table reflect all income less all trading expenses. Accounting fees and certain other minimal business expenses of the partnerships are not deducted in order to calculate an overall net return to each investor from each partnership. Accounting fee information for ERW Partners relating only to trading activities was not fully available to the office of independent counsel.

In addition, this table stops with the quarter ended March 31, 1987, the last quarter during which Meese Partners engaged in transactions. Mr. Meese recused himself from the Wedtech criminal investigation on April 8, 1987, and instructed Mr. Chinn to terminate the partnership on May 5, 1987. This matter was referred to the independent counsel on May 11, 1987. The partnership was terminated on June 30, 1987, in accordance with the terms of the partnership agreement.

The other customer account active over the same period as Meese Partners, MPVC Partners, paid lower overall accounting fees to its accountant even though it invested a much larger sum. The total MPVC Partners accounting fees from July 1, 1985, through June 30, 1987, were \$4,063; the total Meese Partners accounting fees, including a charge of \$2,836 in the second quarter of 1987, were \$5,751.

The net income to Meese Partners from July 1, 1985 through June 30, 1987 was \$30,943; the net return, after all expenses, was 24.8 percent. Over the same period, MPVC Partners had net income of \$371,821 for a net return, after all expenses, of 33.2 percent.

The overall return to MPVC Partners, 39.8 percent, exceeded the return earned by Meese Partners of 34.1 percent. The trading pattern indicated that Meese Partners received a consistently greater net rate of return for the first year of investment activity.

The evidence indicates that, over the entire period of activity, Mr. Chinn used MPVC Partners to maintain his status as a regular calendar player in the underwriting markets for the benefit of himself and Meese Partners. Thus, MPVC Partners participated more frequently than other accounts in less desirable offerings. During the period when Meese Partners had five losing transactions out of 23 total transactions (21.7 percent losing transactions), MPVC Partners had 173 losing transactions out of 444 transactions (39 percent losing transactions). Mr. Chinn may have allocated trades to Meese Partners to ensure that it showed a steady profit, while allowing MPVC Partners to bear more frequent losses -- losses that helped Mr. Chinn maintain his regular calendar player status with the underwriting firms, while also providing him with opportunities to obtain designated commissions.

4. Mr. Chinn Appears to Have Reported Gold Profits to Maintain the Profitability of MPVC Partners in 1985

The evidence indicates that the Meese Partners account fared substantially better in 1985 securities transactions than MPVC Partners and ERW Partners. MPVC Partners

experienced a net loss on securities transactions in the second half of 1985, when Meese Partners reported a net profit. During that period, MPVC Partners reported substantial gold profits, from Loco London Gold transactions, which offset its securities transaction losses. Yet, in the period immediately after Mr. Chinn's last trade for the account of Meese Partners, MPVC Partners reported gold transaction losses of \$281,200. Those gold losses substantially exceeded MPVC Partners' total gold and securities transaction profits of \$161,572 during the period from the first Meese Partners transaction through the end of 1986.

Reported Investment Profits from Securities and Gold Transactions

Entity	7/26/85- 12/31/85	1986	1/1/87- 3/30/87	Total
<u>Meese Partners</u>				
Securities	\$14,222	\$ 13,052	\$ 12,571	\$ 39,846
Gold	0	0	0	0
<u>MPVC Partners</u>				
Securities	(14,980)	108,552	491,636	585,208
Gold	50,900	17,100	(281,200)	(213,200)
Total	35,920	125,652	210,436	378,008
<u>FMI</u>				
Securities	134,594	(38,152)	3,533	99,975
Gold	48,200	316,400	68,200	432,800
Total	182,794	278,248	71,733	532,775
<u>ERW Partners</u>				
Securities	8,086	1,550	0	9,636
Gold	12,800	0	0	12,800
Total	\$ 20,886	\$ 1,550	0	\$22,436

In the period from the first Meese Partners trade on July 26, 1985, through the end of 1985, Mr. Chinn reported \$14,980 in overall securities transactions losses for his largest customer, MPVC Partners, while reporting \$14,222 in overall securities transaction profits for Meese Partners. During the last half of 1985, after the first trade for Meese

Partners, Mr. Chinn credited MPVC Partners with \$50,900 in profits from "Loco London Gold" transactions. As a result of those gold credits, MPVC Partners, which held approximately half the assets managed by Mr. Chinn, reflected an overall trading profit for this period of \$35,920. Meese Partners, which accounted for approximately five percent of the assets managed by Mr. Chinn in the last half of 1985, made profits of \$14,222 over the same period.

In February and March 1987, immediately after reporting profits of \$12,571 and \$488,541 to Meese Partners and MPVC Partners, respectively, on trading in the initial public offering of British Airways securities on February 11, 1987, Mr. Chinn reported a series of gold transaction losses for the account of MPVC Partners.^{149/} These losses, reported as having occurred from February 23, 1987 through March 14, 1987, amounted to \$281,200.

If the allegations concerning the sham nature of the Loco London Gold transactions are correct, it would appear that Mr. Chinn used the funds available in Hong Kong to compensate MPVC Partners for securities losses incurred in 1985 when Meese Partners was reporting securities profits. It

^{149/} On the day of the British Airways public offering, Mr. Chinn allocated to MPVC Partners market purchases and sales in the aftermarket of British Airways securities which resulted in a loss of \$118,516. Thus, the net profit to MPVC Partners on British Airways trades was \$370,025.

would also appear that, shortly after MPVC Partners reported substantial profits on the British Airways transaction in the spring of 1987, Mr. Chinn, through purported gold transactions, reclaimed for himself an amount greater than the amount used to compensate MVPC Partners in the latter part of 1985.

IV. AVAILABILITY OF FUNDS IN MEESE PARTNERS ACCOUNT TO PAY FOR TRANSACTIONS

As a result of Mr. Chinn's practice of engaging in day trades, his use of clearing accounts and his use of traditional securities settlement practices, proceeds from the sale of securities were available to Mr. Chinn at the time the purchase price was required to be paid. As a practical matter, Mr. Chinn's accounts were merely debited for any loss or credited for any profit. The office of independent counsel investigated the question whether that practice was consistent with the obligations imposed by the margin rules of the Federal Reserve Board.

A. Mr. Chinn's Accounts Were Required to Have Cash on Hand Sufficient to Meet Their Purchase Obligations Before the Receipt of Any Sales Proceeds

While Mr. Chinn conducted his customers' transactions through clearing accounts at Bear, Stearns, he was subject to regulation under the margin rules of the Federal Reserve Board applicable to broker-dealers. The margin requirements limited the ability of a customer to borrow

against the securities in his account. Regulation T, 12 C.F.R. 220. When Mr. Chinn opened accounts at Imperial Trust, he was subject to the same restrictions as applied to banks by the Federal Reserve Board. Regulation U, 12 C.F.R. 221. Mr. Chinn did not enter into margin agreements or borrow any funds to meet any securities payment obligation for any of his clearing accounts.

As explained above, as a result of Mr. Chinn's consistent pattern of day trades, the proceeds from a sale of securities were received at the same time that a payment for the purchase of the same securities was due. Mr. Chinn was thus able to meet his net obligation from the assets in his managed accounts; he was not required actually to pay out the total purchase price and receive back the total sales proceeds.

The margin rules applicable to brokers and banks require customers to have a sufficient amount of cash in their accounts, exclusive of sales proceeds, to meet their purchase obligations before settlement. The rules prohibit the practice, known as "free riding," of using sale proceeds to meet a purchase obligation for the same securities. The margin rules impose this requirement even if the securities are sold in time for the sale proceeds to be available to meet the purchase obligation.

**B. Apparent "Free Riding" for Meese Partners
Account at Bear, Stearns**

As required by the margin rules, it was the general practice of Bear, Stearns to impose a trading restriction on any account which engaged in free riding. Such an account was restricted for 90 days from placing an order unless sufficient cash to pay for the purchase was in the account at the time that the securities purchase was ordered. This restriction in effect deprived a purchaser of the normal privilege of paying the purchase price into the account in the five business days between the trade and the settlement.

The analysis of the Meese Partners accounts showed that, during the time that transactions were cleared through Bear, Stearns, Meese Partners may have engaged in free riding on two occasions. On July 26, 1985, the first day on which a trade was allocated to the Meese Partners account, the account purchased 1,000 shares of Reebok securities and 2,000 shares of Union Exploration Partners securities for \$17,000 and \$44,000, respectively, a total outlay of \$61,000. Total funds in the account at that time were \$50,587. On September 12, 1985, Meese Partners purchased securities in Rockefeller Center Properties for \$80,000 when its account balance, with a credit for excess tax withholding, was \$51,076.

No evidence of the imposition of a restriction by Bear, Stearns was found by the office of independent counsel, although the ordinary practice of Bear, Stearns in such

circumstances would have been to impose a restriction. A free riding restriction on any one of Mr. Chinn's accounts, or even a warning that further conduct would result in a free riding restriction, could have been a reason for Mr. Chinn to move his clearing business to Imperial Trust.

C. Mr. Chinn's Clearing Arrangement with Imperial Trust Appears to Have Been Structured to Allow Free Riding

In the fall of 1985, shortly after the apparent free riding in connection with the Meese Partners account at Bear, Stearns, Mr. Chinn began negotiating with Imperial Trust for a clearing arrangement for his customer accounts. Mr. Chinn opened clearing accounts for FMI, MPVC Partners, Meese Partners and ERW Partners at Imperial Trust on October 25, 1985; he opened an account for the Essie E. Chinn Trust on December 10, 1985.

The arrangement structured between Mr. Chinn and Imperial Trust expressly permitted Mr. Chinn to wait until the close of business on the day after a transaction before determining which customer would be credited with the trade. In addition, the arrangement appears to have permitted Mr. Chinn to report one purchase and sale as a series of smaller purchases and sales transactions over the course of the day. The reporting of the transactions in this manner may have concealed any free riding by the division of one large purchase obligation into a number of obligations smaller than the account balance at the time. These arrangements did not

change Mr. Chinn's payment obligations to Imperial Trust because Imperial Trust looked only to the net results of Mr. Chinn's transactions in order to determine his net obligation on the settlement day. Mr. Chinn therefore may have established his clearing procedures and reported his transactions through Imperial Trust in a manner designed to avoid the prohibition on free riding.

It appears that the Meese Partners account may have engaged in free riding on two occasions with respect to transactions cleared through Imperial Trust. Meese Partners reported a \$175,500 purchase of Ultimate securities on June 26, 1986 when its total balance was \$70,844. On August 19, 1986, Meese Partners reported a purchase of Dime Savings securities for \$88,750, when its total balance was \$63,983. There is no evidence that Imperial Trust ever imposed a free riding restriction on the Meese Partners account or any other account managed by Mr. Chinn.

Other reasons may explain Mr. Chinn's decision to move his securities business to Imperial Trust. Imperial Trust may have charged lower clearing fees. Also, it may have served Mr. Chinn's purposes to clear through Imperial Trust so that Bear, Stearns would not be aware that he was "flipping" the shares he purchased in any public offerings purchased through Bear, Stearns. Whatever the reasons, Mr. Chinn's clearing arrangement with Imperial Trust appears to have enabled him to avoid the free riding restrictions.

The independent counsel has found no evidence that Mr. Chinn opened a margin account for Meese Partners, or that Mr. Chinn owed any money to his clearing firm for transactions on behalf of the Meese Partners account.

While Mr. Chinn's conduct may have violated the free riding regulations, his conduct cannot be attributed to Mr. Meese. It would be unusual for an investor to be aware of the clearing arrangements used by his money manager. There is no evidence that Mr. Meese had any knowledge of the investment arrangements used by Mr. Chinn to effect transactions for Meese Partners.

V. HONG KONG PAYMENTS TO MEESE PARTNERS

The Meese Partners accounts received two checks from Hong Kong bank accounts of Shun Loong-Bear Stearns Limited in 1985: one check for \$75 dated October 1, 1985, and a check for \$669.66 dated December 9, 1985. One "Loco London Gold" document dated December 9, 1985, produced from the files of Mr. Chinn's accountant, indicated that the \$669.66 was the withdrawal of the balance maintained in a "Meese" account in Hong Kong. Hong Kong authorities have obtained records indicating that \$660.00 was originally placed in a "Meese" account in Hong Kong which earned interest of \$9.66, resulting in the withdrawal of \$669.66 on December 9, 1985. Both payments to Meese Partners were reflected on the 1985 partnership tax form as "Transaction Fees and Refunds." "Transaction fees" for the account were deducted from this

total, and income of \$170 was reported. The accountant's workpapers did not further explain the checks or this tax return entry. The accountant was unable to provide an explanation for these payments to the Meeses Partners account from Hong Kong funds.

The Loco London Gold transaction documents concerning the payment to Meese Partners from this "Meese" account, coupled with allegations of substantial sums transferred through Hong Kong, led the office of independent counsel to investigate those transactions. The only witness who gave information concerning those apparent gold transactions, the former employee of Mr. Chinn, was unaware of any transactions on behalf of Mr. Meese or Meese Partners through Mr. Chinn's Hong Kong accounts.

Working in conjunction with the Hong Kong authorities, the independent counsel attempted to trace the money transferred to Hong Kong from designated commission rebates that may have been controlled by Mr. Chinn through the sham "Loco London Gold" transactions. The office of independent counsel and Hong Kong authorities executed contemporaneous search warrants.^{150/} At the time of the Hong

^{150/} Agents working with the office of independent counsel executed a search warrant at the business premises of Mr. Chinn in San Francisco at 3:30 p.m. on the afternoon of Saturday, November 28, 1987, after Hong Kong authorities had searched the business premises of Alvin Chan, his home and his
(Footnote Continued)

Kong searches, Alvin Chan was arrested on Hong Kong false accounting charges arising from his participation in the gold transactions.

Although Alvin Chan asserted his privilege under Hong Kong law not to cooperate with either investigation, his firm and Hong Kong authorities provided information and documents to the independent counsel. The documents indicated that as much as \$1.9 million which may have passed through certain Hong Kong accounts may be connected with Mr. Chinn. Although substantial questions remain with respect to the handling of those funds, the independent counsel has found no evidence, other than the two payments totaling \$745, to connect Mr. Meese with the Hong Kong funds apparently controlled by Mr. Chinn.

The office of independent counsel analyzed the overall records of Mr. Chinn with respect to the two payments of \$75 and \$669.66 to Meese Partners. From this analysis, the independent counsel determined that the \$669.66 payment was equal to the share of a designated commission, with accumulated interest, returned to Mr. Chinn in connection with a trade made for Meese Partners on the first day it was credited with transactions. The records obtained from Hong

(Footnote Continued)

safe deposit box beginning at 11:00 a.m. on Friday, November 27, 1987, (8:00 p.m., Thursday, November 26, 1987, San Francisco time).

Kong indicated that these identified funds were the only funds deposited to a Meese account in Hong Kong. They further show that the \$669 disbursement to the Meeses occurred after the designated commission money for this transaction arrived in Hong Kong.

Similar deposits were made at the same time to the Loco London Gold accounts of MPVC Partners, ERW Partners and FMI at Shun Loong-Bear Stearns Limited. Purported gold trades were reported to bring the money into the United States for credit to the respective entities. The amounts returned to Meese Partners, MPVC Partners and ERW Partners were proportionate to the purchases of the institutional pot stock which appear to have generated the commissions transferred to Hong Kong. However, FMI appears to have received, again against purported gold trades, more than its share of the designated commissions. The evidence does not show the source of FMI's disproportionate share.

The independent counsel has not obtained any evidence to explain the \$75 payment to Meese Partners from a Hong Kong bank. However, this \$75 payment is not posted in the records maintained in Hong Kong for the purported gold transactions. The office of independent counsel learned of the general practice of Shun Loong-Bear Stearns Limited of making small refunds of certain clearing charges and commissions to Mr. Chinn and his customers. The \$75 payment was consistent with such a refund.

The only information known to have been provided to the Meeses about the Hong Kong payments to Meese Partners is the reference to refunds of transaction fees made on a partnership tax return which they received. Mr. Meese testified that he had no knowledge of any checks sent to Meese Partners from Shun Loong-Bear Stearns Limited, or of any gold transaction on behalf of Meese Partners, or of any "Loco London Gold" trading by Meese Partners.

**VI. MR. MEESE'S KNOWLEDGE OF MR. CHINN'S ACTIVITIES
FOR MEESE PARTNERS**

Meese Partners appears to have been managed by Mr. Chinn in a manner that provided an above average investment return to the Meeses. The independent counsel investigated the contacts between the Meeses and Mr. Chinn to ascertain Mr. Meese's knowledge, if any, concerning the operation of Meese Partners.

**A. Reports of Meese Partners Results were
Furnished to the Meeses on A Quarterly and
Annual Basis**

Although the Meese Partners agreement provided that FMI would supply the Meeses with quarterly reports, there is no evidence that quarterly reports for the third and fourth quarters of 1985, the first two quarters following the formation of the partnership, were ever completed. While a handwritten report was prepared for the last quarter of 1985, there is no evidence that this report was ever finalized or conveyed in any form to the Meeses.

The following information was reported to the Meeses for 1986 and 1987:

Quarter Ending	Total Assets End Qtr.	Total Income For Qtr.	Mgmt. Fee To FMI	Other Exp.	Net Income
=====					
3/31/86	\$60,932	\$ 5,525	\$ 914	\$ 17	\$4,594
6/30/86	72,884	12,575	2,326	623	9,626
9/30/86	63,649	(8,169)	(1,817)	1,065	(7,418)
12/31/86	67,386	5,568	939	457	4,172
1986	67,386	15,499	2,362	2,162	10,974
3/31/87	74,741	13,508	2,514	1,203	9,791
6/30/87	71,941	1,005	0	3,201	(2,196)
6 mos. 1987	\$71,941	\$14,513	\$2,514	\$4,404	\$7,595

NOTE: Quarterly figures were not separately stated for the quarter ended 12/31/86. The statement for 12/31/86 was cumulative for the year end. The amounts for the fourth quarter of 1986 were extrapolated for schedule purposes.

According to Mr. Meese, he received the quarterly reports, reviewed them quickly, and made a rough calculation of the return he was receiving on his investments.

In addition to quarterly reports, Mr. and Mrs. Meese each year also received from Mr. Chinn's accountant a partnership tax return on Internal Revenue Service Form 1065. Form 1065 reported the taxable income to the Meeses from the partnership during the preceding calendar year.

**B. Meetings, Telephone Contacts and other
Miscellaneous Communications Between
Mr. Meese and Mr. Chinn**

The evidence shows that Mr. Meese had at least five meetings with Mr. Chinn in Washington, D.C., from the beginning of their investment relationship until the final Meese Partners transaction. Dr. London attended at least three of those meetings.

Mr. Meese recalled that he had one meeting with Mr. Chinn in the latter's San Francisco offices when Mr. Meese obtained a distribution check for \$5,000 drawn on one of the Meese Partner accounts. Mr. Meese stated that he spent five or ten minutes talking to Mr. Chinn about personal matters.

Mr. Meese also had telephone conversations with Mr. Chinn from time to time, apparently relating to matters involving the management of the Meese Partners account by Mr. Chinn.

In addition, Mr. Meese sent Mr. Chinn two handwritten notes discussing procedures for the operation of the Meese Partners account. Other than some routine brokerage account statements sent to the Meeses by FMI, there is no evidence of any other communications between Mr. Chinn and Mr. Meese.

Mr. Meese did not recall having any discussions concerning any aspect of Wedtech's operations during any of his meetings with Mr. Chinn. The independent counsel has no evidence that these various meetings and communications involved anything other than normal social pleasantries and general matters relating to the operation of Meese Partners.

VII. TERMINATION OF MEESE PARTNERS

On April 8, 1987, after public reports concerning allegations of criminal conduct by Wedtech officials and Mr. Chinn's position with Wedtech, Mr. Meese recused himself from all Wedtech matters. Mr. Chinn had not made a trade for Meese Partners since February 11, 1987. Sometime after June 11, 1987, Mr. Chinn sent Mr. Meese a handwritten note, with the accountant's financial statement for the quarter ended March 30, 1987. The note stated: "The account has been dormant since the end of March, as I have been preoccupied with my legal issues and haven't had time to spend on my own, or my clients, portfolios."

On May 5, 1987, Mr. Meese wrote a letter to Mr. Chinn to confirm his request, conveyed in a telephone

conversation earlier that day, that Meese Partners be terminated. The partnership was terminated on June 30, 1987.

On July 6, 1987, Mr. Meese wrote Mr. Chinn and asked that the partnership's affairs be completed as soon as possible. At the same time, Mr. Meese asked Mr. Chinn to "retransfer" to the Meeses the interests in the regional Bell operating company securities and related dividends. Mr. Chinn executed a retransfer document on July 9, 1987. Assets in the account totaling \$69,119 were sent to the Meeses at the end of July 1987. A final accountant's report for the second quarter of 1987 was sent to the Meeses sometime after July 15, 1987.

In addition to the \$69,119 received by the Meeses on the termination of Meese Partners, which represented the return of their original investment plus all reinvested income, the Meeses made three cash withdrawals totaling \$16,500 from the partnership during its existence. From May 23, 1985, through June 30, 1987, the Meeses earned \$30,943, after all expenses, on their original investment of \$54,581, for an aggregate return of approximately 56.6 percent over the period of approximately two years.

CONCLUSIONS

The office of independent counsel was unable to obtain evidence concerning all of Mr. Chinn's investment activities. Moreover, the testimony of Mr. Wallach, Mr. Chinn and Dr. London was unavailable because each of them claimed

his constitutional privilege not to be compelled to be a witness against himself.

The testimony of three employees of Mr. Chinn and of Mr. Chinn's broker and accountant [GRAND JURY MATERIAL DELETED

] The accountant, the broker and one of the employees provided useful information to the office of independent counsel. The other two employees denied that they had any substantial knowledge about Mr. Chinn's investment activities relevant to this investigation.

The independent counsel has determined that there is no substantial evidence that Mr. Meese's relationship with Mr. Chinn involved acceptance by Mr. Meese of anything of value from Mr. Chinn or from Mr. Wallach for or because of an official act by Mr. Meese.

The independent counsel also has concluded that no benefits accrued to Mr. Meese by virtue of the fact that Mr. Wallach, Mr. Chinn and Dr. London had a business relationship with Wedtech. Although Messrs. Wallach and Chinn and Dr. London may have taken the opportunity presented by their meetings with Mr. Meese to attempt to promote Wedtech's interests, there is no basis for concluding that, if they did, Mr. Meese performed any acts which benefited Wedtech during the relevant period.

PART THREE

**MR. MEESE'S HOLDINGS IN AND PARTICIPATION
IN MATTERS RELATING TO AT&T AND THE
REGIONAL BELL OPERATING COMPANIES**

INTRODUCTION

In the review of Attorney General Meese's financial disclosure forms for 1985 and 1986, and in the course of investigating his dealings with W. Franklyn Chinn, information was obtained which suggested that Mr. Meese may have taken action affecting the regional Bell operating companies during a period when he held legal title to shares in those companies. The office of independent counsel investigated whether Mr. Meese may have acted in violation of federal conflict of interest provisions in relation to his shareholdings in American Telephone and Telegraph Company (AT&T) and the regional Bell operating companies (RBOCs) created by the AT&T Consent Decree. The relevant federal criminal statute, 18 U.S.C. § 208(a), prohibits personal and substantial participation by an officer of the executive branch of the United States government in a particular matter in which, to his knowledge, he or his spouse has a financial interest.^{151/}

^{151/} Subsection 208(a) provides as follows:

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any indepen-
(Footnote Continued)

The independent counsel's investigation focused on Mr. Meese's participation as Attorney General in telecommunications matters before the Department of Justice between February 1985, when Mr. Meese became Attorney General, and January 1987, when he received a waiver under 18 U.S.C. § 208(b) which had the effect of allowing his participation in telecommunications matters.^{152/}

(Footnote Continued)

dent agency of the United States, a Federal Reserve bank director, officer, or employee, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest --

Shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

152/ Subsection 208(b) provides as follows:

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or

(Footnote Continued)

Prior to his confirmation as Attorney General, Mr. Meese committed to sell all of his and Mrs. Meese's telephone industry holdings, including 170 shares in AT&T and 17 shares in each of the seven RBOCs. This commitment was made in an ethics agreement with David H. Martin, Director of the Office of Government Ethics, and in confirmation hearings before the Senate Judiciary Committee.

In May 1985, Mr. and Mrs. Meese's telephone company holdings were sold, with the exception of the RBOC holdings; which were not sold because Mr. and Mrs. Meese could not locate the stock certificates. On May 23, 1985, Mr. and Mrs. Meese executed a Transfer of Property document which purported to transfer all right, title and interest in their RBOC holdings to Mr. Chinn. Mr. and Mrs. Meese also undertook to obtain replacement certificates, a process completed more than two years later in June 1987.

As will be shown, the Transfer of Property document was ineffective; Mr. and Mrs. Meese continued to hold the beneficial interest in the RBOC stock until September 1987. Moreover, Mr. Meese had reason to know of their continued ownership: Mr. and Mrs. Meese continued to receive dividend

(Footnote Continued)

(2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

checks, stock dividends and literature such as annual reports from the RBOCs; in October 1986, they declared that they still owned the stock for income tax purposes; and their correspondence through 1986 and 1987 toward obtaining replacement stock certificates served to put Mr. Meese on notice of their continued ownership of the stock. From this and other evidence, the independent counsel has determined, for the reasons stated in the legal analysis of this Report, that a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese had knowledge of his financial interest in the RBOC stock within the meaning of 18 U.S.C. § 208(a).

In the period from February 1985 through January 1987, Mr. Meese participated in telecommunications industry issues generally and RBOC matters specifically that were before the Department of Justice. The component of the Department of Justice responsible for telecommunications industry matters is the Antitrust Division. Mr. Meese had meetings with the Assistant Attorney General for Antitrust at which issues of concern to AT&T, the RBOCs and the telecommunications industry were discussed. He was kept informed regularly by information memoranda of important telecommunications matters before the Antitrust Division. He communicated by letter and telephone on RBOC-related matters with officials from other government entities, including the Department of Commerce and Congress. Finally, Mr. Meese's

activities included meetings and correspondence with officials of AT&T, the RBOCs, and other telecommunications companies.

In January 1987, Mr. Meese obtained a waiver under 18 U.S.C. § 208(b) that allowed his participation in telecommunications matters before the Department of Justice on the basis that his holdings in the RBOCs were "not so substantial as to be deemed likely to affect the integrity of the services which the Government" might expect from him.

As set forth in the legal analysis of this section of the Report, the independent counsel has determined that a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese violated 18 U.S.C. § 208(a) by personally and substantially participating as Attorney General in RBOC-related particular matters in which, to his knowledge, he had a financial interest. However, the independent counsel has determined that criminal prosecution is not warranted.

**I. TELECOMMUNICATIONS MATTERS BEFORE THE
DEPARTMENT OF JUSTICE -- 1981 THROUGH 1987**

Throughout this century, local telephone systems principally owned by AT&T have had monopoly rights subject to the approval and oversight of regulators. In 1949, the Department of Justice brought a civil suit against AT&T for antitrust violations. The lawsuit was settled in 1956. On November 20, 1974, the Department of Justice of the Ford Administration again filed a civil antitrust suit against AT&T and Western Electric, AT&T's manufacturing subsidiary.

The complaint alleged antitrust violations by AT&T, then the largest private corporation in the world, and sought divestiture of the local Bell operating companies and of Western Electric.

The trial of the AT&T case began on January 15, 1981, six days before President Reagan took office. As Counselor to the new President, Mr. Meese participated in consideration of the issues posed by the AT&T lawsuit. At that time, Mr. and Mrs. Meese owned 170 shares of AT&T stock, \$700 in AT&T bonds, \$1,000 in New York Telephone bonds, and \$1,000 in Southwestern Bell Telephone bonds.^{153/}

In January 1982, AT&T and the Department of Justice agreed, during trial, to settle the complex litigation. On August 24, 1982, the Modification of Final Judgment (MFJ) embodying the settlement agreement between AT&T and the Department of Justice was filed with the United States District Court for the District of Columbia, and was approved by Judge Harold H. Greene.

The MFJ vacated the final judgment entered in 1956 and provided for a reorganization of the nation's telecommunications industry. In accordance with its terms, on January 1, 1984, AT&T transferred roughly 80 percent of its assets to seven newly-created regional Bell operating

^{153/} Mr. and Mrs. Meese acquired these securities by gift and inheritance.

companies.^{154/} Mr. and Mrs. Meese, along with most of the other AT&T shareholders, received newly issued shares in AT&T and in each of the seven RBOCs.^{155/} The RBOCs were established as regulated monopolies providing local telephone services, and AT&T, along with its manufacturing and long distance businesses, could no longer provide regulated services.

Pursuant to the MFJ, the Court retained jurisdiction over the lawsuit and over the RBOCs. The Department of Justice was responsible for day-to-day oversight of the many issues arising under the MFJ. It had the responsibility of overseeing telecommunications issues stemming from the MFJ and making recommendations to the Court for final determination.

The RBOCs were subjected to certain restrictions. They were not permitted to provide interexchange (long distance) telecommunications services; they were not permitted to provide information services (such as data processing and

^{154/} The seven RBOCs are Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Telesis, Southwestern Bell, and U.S. West.

^{155/} AT&T shareholders had the option of specifying that they wanted to receive shares in certain of the RBOCs. Shareholders who made no specific requests, like Mr. and Mrs. Meese, received one share in each of the seven RBOCs for each ten shares of AT&T. These shareholders retained their AT&T shares; the net result was that such shareholders held shares in all eight entities. Thus, immediately after the date of divestiture, January 1, 1984, Mr. and Mrs. Meese's combined holdings included 170 AT&T shares and 17 shares in each of the seven RBOCs.

answering services); they were not permitted to manufacture customer premises equipment (such as home telephones); and they were not permitted to provide any other new products or services.^{156/}

The MFJ provided for waivers of these restrictions in certain circumstances. An RBOC may be allowed to enter a restricted market if it can establish to the Court's satisfaction that "there is no substantial possibility that it could use its monopoly power to impede competition in the market it seeks to enter." This provision of the MFJ gave rise to a "line of business" waiver process: an RBOC first argues to the Department of Justice its case for entry into a closed market. If the Department of Justice approves the

^{156/} Section II.D. of the MFJ provides as follows:

After completion of the reorganization specified in section I, no [RBOC] shall, directly or through any affiliated enterprise:

1. provide interexchange telecommunications services or information services;
2. manufacture or provide telecommunications products or customer premises equipment (except for provision of customer premises equipment for emergency services); or
3. provide any other product or service, except exchange telecommunications and exchange access service, that is not a natural monopoly service actually regulated by tariff.

waiver, the RBOC may petition the Court, which allows or denies the waiver of the II.D.3. restriction.

In the Response to Public Comments on Proposed Modification of Final Judgment filed by the Department of Justice with the Court on May 27, 1982, the Department undertook "to make a formal report to the Court on the continuing need for the restrictions on the third anniversary of the date of divestiture, and every third year thereafter so long as the restrictions remain in force." This triennial review was designed to ensure "continuing scrutiny of the factors underlying the restrictions" and to "limit the duration of the restrictions to the minimum period required by the state of technology and competition."

The first triennial review was scheduled for January 1987, three years after the January 1984 divestiture. The Department of Justice's formulation of this first report was very important to the RBOCs, to the telecommunications industry, and to the Department of Justice.

II. THE INVOLVEMENT OF EDWIN MEESE III IN AT&T-RELATED MATTERS IN 1981 AND 1982

A. AT&T-Related Matters Before the Incoming Reagan Administration

In 1982, Mr. Meese described the telecommunications industry issues confronting the incoming Reagan Administration as follows: "At the beginning of the Administration, we faced two separate actions concerning telecommunications policy:

(1) an antitrust suit that had been initiated by the Justice Department against AT&T approximately seven years earlier; and (2) pending legislation which would reshape the entire telecommunications industry and which had been debated for several years."^{157/}

Several Cabinet officers of the Reagan Administration, particularly Attorney General William French Smith, Secretary of Commerce Malcolm Baldrige and Secretary of Defense Caspar W. Weinberger, opposed continuing the Department of Justice lawsuit against AT&T. Attorney General Smith and Deputy Attorney General Edward C. Schmults were recused from participation in AT&T matters. In late February or early March 1981, William F. Baxter, incoming Assistant Attorney General for Antitrust, met with Mr. Meese and James A. Baker III, White House Chief of Staff, to inform the White House of his plans concerning the case.

At that time, the civil antitrust case against AT&T was being tried. Mr. Baxter's intentions were to continue with trial of the case, and not to seek a dismissal. The United States' request for a remedy asked that the parts of

^{157/} Mr. Meese's participation as Counselor to the President in AT&T-related matters in 1981 and 1982 was not extensively covered by this investigation, because the five-year statute of limitations for federal crimes had run before the investigation began. It should also be noted that Mr. Meese declined the request of the office of independent counsel that he waive the bar of the statute of limitations.

AT&T that required regulatory supervision be separated from the parts that did not require such supervision. Mr. Baxter believed that this approach was in the public interest.

Mr. Baxter informed the office of independent counsel that Messrs. Meese and Baker had apparently decided before the meeting to ask general questions and obtain Mr. Baxter's position, but not express any opinions of their own. Mr. Baxter believed that their response to his approach of pursuing the lawsuit was not one of "unrestrained enthusiasm," but no one from the White House came "within a mile of telling" Mr. Baxter to dismiss the case. He said that decisions relating to the case were left to the Department of Justice. Mr. Baxter also stated that, at Cabinet-level meetings relating to telecommunications policy, the primary focus was on legislative policy rather than the pending lawsuit.

Mr. Meese received a September 30, 1981 memorandum from Dennis M. Kass, Special Assistant to the President in the Office of Policy Development, describing this policy choice by the Administration of favoring a legislative rather than a litigating approach. The memorandum listed the policy trade-offs inherent in the Administration's decision to support "a legislative approach rather than a Court-ordered divestiture." The focus on legislative solutions did not entail dismissing the lawsuit. However, there was some concern about the

possible adverse effects of the lawsuit on the prospects of legislation intended to address the same issues.

Telecommunications matters were deliberated at the Cabinet level by the Cabinet Council on Commerce and Trade (CCCT), which established a Cabinet-level Task Force on Telecommunications Policy on May 28, 1981. The purpose of the Task Force, according to Mr. Meese's description, was "to ascertain the current state of the telecommunications industry, and the feasibility of actions to deregulate the industry and make it more efficient."

In a June 1, 1982 memorandum from Mr. Meese to Fred F. Fielding, Counsel to the President, concerning Mr. Meese's role in telecommunications policy deliberations, Mr. Meese noted his attendance at working sessions of the CCCT. The CCCT considered the final report of the Task Force and policy options relating to telecommunications issues and presented recommendations to the President for decision.

B. Motion for Continuance in the AT&T Case

At CCCT meetings, Secretary Baldrige was particularly concerned about the prospect of proposed legislation in light of the ongoing trial. During the spring and summer of 1981, Secretary Baldrige and Secretary Weinberger argued that the case should be dismissed. According to Mr. Baxter, Secretary Baldrige believed that continuing the litigation was mistaken policy, while dismissal would have no negative consequences -- "only a couple of lawyers even knew the case

was pending." Mr. Baxter disagreed. He felt that the proposed legislation would not resolve all the regulatory concerns that needed to be considered, while the remedy requested from the Court was the appropriate solution. He also felt that dismissing the case would be politically damaging.

As the dispute between legislative and courtroom adherents sharpened, Mr. Baxter proposed that the Department of Justice move for a continuance in the case. If Judge Greene were to grant a continuance, it would enable the Administration to focus, during the period of the continuance, on legislative remedies without the disrupting publicity of an ongoing trial. Mr. Baxter expected Judge Greene to deny the motion for the continuance. He told the office of independent counsel that he made his views known. The motion for a continuance was viewed as a trial balloon to assess the level of public and press attention to the case -- and thus its political importance. At a July 28, 1981 meeting in Mr. Meese's office attended by Messrs. Baxter, Fielding, and Meese, among others, it was decided to go forward with the motion for continuance.

The motion for a continuance was filed on July 29, 1981. The government's "Press Guidance" statement for July 29, 1981, stated that the "reason for seeking a continuance at this time was to expedite legislative deliberation and action

pending legislation to restructure the telecommunications industry."

Judge Greene denied the motion for continuance the same day; the press coverage of the motion and Judge Greene's order was extensive. When Mr. Baxter came to Mr. Meese's office the next day, newspaper articles about the motion were spread out in the office. Given the intense press coverage, Secretary Baldrige no longer pressed his claim that dismissing the case would attract little public attention. Those present at that meeting, including Messrs. Baxter, Baldrige, and Meese, "tacitly agreed that dismissing the case was a bad idea." The message that Mr. Baxter received from that meeting was that dismissal was not a politically realistic option. The best course would be to work through the Task Force on Telecommunications Policy toward redrafting the proposed legislation so that Mr. Baxter could fully support it.

A "Memorandum for Internal Guidance" dated July 30, 1981, summarized the discussion at the White House meeting. It stated: "At least for the present time, consideration of achieving quiescence in the lawsuit by means of a stipulated dismissal without prejudice would be abandoned." The internal memorandum also stated that the Department of Justice would seek to "work out with AT&T a consent decree" that tracked the Administration's proposed legislative solution.

C. Settlement of the AT&T Case

Negotiations toward a settlement of the AT&T case, which had been in progress throughout the course of the lawsuit, came to a successful conclusion on Tuesday, January 5, 1982. On January 6 or 7, 1982, Mr. Baxter informed Mr. Fielding of the agreement, and a press conference was scheduled to announce it on Friday, January 8, 1982.

D. Issues Relating to Mr. Meese's AT&T Holdings

On January 8, 1982, Mr. Fielding wrote a memorandum to Mr. Meese referring to a meeting on the previous day. At that meeting, Mr. Fielding had learned that Mr. Meese owned AT&T securities. Mr. Fielding was concerned about a possible appearance of a conflict of interest relating to Mr. Meese's participation in the AT&T matter while holding AT&T securities.

Mr. Fielding's memorandum indicated that Messrs. Meese and Fielding had discussed briefly Mr. Meese's holdings and the idea that the holdings were not so substantial as to affect Mr. Meese's judgment. This would have presented Mr. Fielding with a basis for issuing a waiver to Mr. Meese under 18 U.S.C. § 208(b) allowing him to participate in telephone industry matters.

Mr. Fielding examined Mr. Meese's financial disclosure filing of February 1981, to determine the nature of his holdings. In the January 8, 1982 memorandum to Mr. Meese,

Mr. Fielding stated that he could not determine the total amount of Mr. Meese's holdings. Without more specific information on the value of the holdings, Mr. Fielding could not make the determination that the holdings were de minimis. The January 8, 1982 memorandum was a request that Mr. Meese provide him with "the specifics" concerning his AT&T holdings, because "[o]nce the AT&T settlement is announced, I think it is inevitable that someone will raise the issue."

About a month later, Mr. Fielding sent Mr. Meese a short memorandum reminding him of the importance of the data requested in the January memorandum. According to Mr. Fielding, his February 3, 1982 memorandum was not "a gentle reminder," but a strong statement that the information was needed as soon as possible.

Mr. Meese did not supply Mr. Fielding with the requested information until May 31, 1982, when he sent Mr. Fielding a memorandum listing the AT&T and other telephone industry securities held by Mr. and Mrs. Meese. The final paragraph of that memorandum reads: "As we discussed in January 1982, and again this month, you have indicated that such holdings are of a de minimus amount as far as providing any limitation on my participation in public policy decisions concerning the telecommunications industry." A note on the memorandum in Mr. Fielding's handwriting indicated that Mr. Fielding believed the AT&T holdings were "probably" of a de minimis nature, but he "didn't yet know # of shares!"

**E. 1982 Waiver Under 18 U.S.C. § 208(b)
Permitting Mr. Meese's Participation
In Telecommunications Matters**

The day Mr. Meese's memorandum was received, May 31, 1982, staff attorneys in Mr. Fielding's office held meetings concerning a possible waiver under 18 U.S.C. § 208(b). Mr. Meese had also been requested to provide information about his participation in telecommunications industry matters. On June 1, 1982, Mr. Meese sent Mr. Fielding a memorandum describing the nature of his role in telecommunications policy deliberations. On July 26, 1982, Mr. Fielding granted Mr. Meese a waiver under 18 U.S.C. § 208(b) that allowed his participation "either in meetings to discuss the Administration's policy and strategy for legislatively restructuring the telecommunications industry or in decisions necessary to implement these policy and strategy recommendations."

The basis for the waiver was that the telecommunications industry holdings of Mr. and Mrs. Meese were not so substantial as to be likely to influence Mr. Meese in his discussions of decisions on the telecommunications industry or to cause the public to question [his] decisional integrity on this issue."^{158/} The effect of a valid waiver under

^{158/} The May 31, 1982 handwritten notes of Richard A. Hauser estimated the value of Mr. and Mrs. Meese's telephone industry holdings at roughly \$11,500.

18 U.S.C. § 208(b) is to permit prospective participation by the official receiving the waiver. It has no retroactive effect for past actions.^{159/}

The last paragraph of Mr. Fielding's memorandum to Mr. Meese noted that, in the view of the Office of Government Ethics and the White House Counsel, "discussions and decisions relating to legislative proposals for restructuring the telecommunications industry [did] not constitute 'particular matters' within the meaning of the statute." The implication was that, to the extent Mr. Meese's role related only to legislative matters, a waiver may have been unnecessary.^{160/}

**III. MR. MEESE'S COMMITMENTS TO DIVEST
HIS TELECOMMUNICATIONS INDUSTRY HOLDINGS**

A. 1984 -- Ethics Agreement, First Round

On January 23, 1984, President Reagan nominated Mr. Meese to be Attorney General of the United States. On February 8, 1984, acting in accordance with the financial disclosure requirements for Presidential nominees, Mr. Meese submitted his SF 278 financial disclosure form for 1983 with

^{159/} Mr. Meese testified that he "would assume the waiver, since the facts were essentially the same, would continue" after he became Attorney General.

^{160/} According to the Office of Government Ethics, this view is incorrect; "legislation does constitute a 'particular matter' for purposes of [18 U.S.C.] 207(c)," a companion provision to Section 208. OGE 81x1, Letter to a Designated Agency Ethics Official dated January 9, 1981.

the Office of Legal Counsel (OLC) of the Department of Justice.

During the second half of February 1984, meetings were held at the White House and at OLC, and memoranda were drafted concerning potential conflict of interest and financial disclosure issues relating to Mr. Meese. The process culminated in Mr. Meese's first "ethics agreement" with the Office of Government Ethics (OGE) in the form of a February 29, 1984 letter from Mr. Meese to Mr. Martin, Director of the OGE.^{161/}

Ethics advice within the Department of Justice is provided by the relevant Designated Agency Ethics Officials (DAEOs). The DAEO for the Office of the Attorney General is the Assistant Attorney General for the Office of Legal

^{161/} An "ethics agreement" is an undertaking to carry out one or more of the following actions: recusal or disqualification; divestiture; resignation from non-federal entities; obtaining the issuance of a waiver under 18 U.S.C. 208(b)(1); or establishment of a blind trust. 5 CFR 734.802(a).

Section 211 of the Ethics in Government Act of 1978, 5 U.S.C. Appendix 4, as implemented by 5 CFR 734.801-805, provides that a nominee to a position requiring the advice and consent of the Senate shall report to OGE and to his or her Designated Agency Ethics Officer any ethics agreements which the nominee has made, including ethics agreements made with the Senate confirmation committee. The regulations specify that the individual must complete the agreed-upon actions within three months of the date of the agreement, and must notify OGE and the Senate confirmation committee of the actions taken to comply with the agreement.

Counsel. The highest ranking DAEO in the Department is the Assistant Attorney General for Administration, who heads the Justice Management Division (JMD). Therefore, legal advice on ethics and conflict-of-interest matters relating to the Attorney General involved both OLC and JMD.

The process of addressing potential conflict of interest issues facing Mr. Meese began formally when meetings were held on February 15, 16, and 22, 1984, among attorneys at OLC and JMD. The meetings focused on Mr. Meese's options to resolve potential conflicts, which were recusal, waiver, divestiture, or creation of a blind trust.

Mr. and Mrs. Meese's holdings in AT&T, Texaco and Exxon were the subjects of concern. At that time, the AT&T divestiture was in progress, and Texaco and Exxon were involved in major litigation against the Department of Justice. Since these were large and important cases before the Department, it would be awkward for Mr. Meese to be recused from them. It was therefore decided that Mr. and Mrs. Meese should divest their holdings in AT&T, Texaco and Exxon, and that Mr. Meese would recuse himself or seek a waiver with respect to matters related to other financial holdings.

A White House draft statement dated February 23, 1984, reflected this decision. The draft statement was expanded slightly in a February 24, 1984 Department of Justice "Draft Recusal Letter."

The 1984 ethics agreement was a letter dated February 29, 1984, from Mr. Meese to Mr. Martin. In the letter, Mr. Meese stated his intention to sell his and Mrs. Meese's telephone industry holdings "upon my confirmation or as soon thereafter as is practicable." The letter affirmed Mr. Meese's commitment to his recusal policy, which would avoid any actual or apparent conflict of interest between my duties as Attorney General and my personal financial interests while, at the same time, enabling me fully to participate in policy decisions as Attorney General."

Nomination hearings on Mr. Meese's appointment were held before the Senate Judiciary Committee on March 1-2 and 3-6, 1984. Among other things, Mr. Meese stated his intention to inform OLC and the Office of Professional Responsibility (OPR) of all his financial holdings, and to divest all of the stocks listed in the ethics agreement, including AT&T.

At the hearings before the Senate Judiciary Committee on March 2, 1984, the following exchange took place:

Senator Heflin. I noticed from your ethics in Government statement that you have said you will divest yourself of both the AT&T and Exxon stock if you are confirmed. . . .

Mr. Meese. Yes, sir; that is correct.

. . . .

The Chairman (Senator Thurmond). Mr. Meese, you said you filed your intention to sell stocks.

Mr. Meese. Yes, Senator, if you are referring to the letter to the Honorable David Martin, Director of the Office of Government Ethics,

dated the 29th of February 1984 that does set forth in some detail my intention, if confirmed, to divest myself of certain holdings that might possibly be the subject of departmental activity . . . , and to recuse myself from anything else that the Department of Justice ethics officials recommend would not be appropriate for me to take part in.

Confirmation proceedings were suspended with the appointment of Independent Counsel Jacob A. Stein, whose investigation commenced in April 1984. Mr. Stein's final report was filed on September 20, 1984, and confirmation proceedings resumed in January 1985.

B. 1985 -- Ethics Agreement, Second Round

On January 10, 1985, Mr. Meese filed his SF 278 for 1984. The disclosure form went to the Justice Management Division of the Department of Justice for review. On January 11, 1985, Janis A. Sposato, Office of Legal Counsel, called H. Lawrence Garrett III, Associate Counsel to the President, with questions concerning the form. Among other things, Ms. Sposato again raised the question of Mr. Meese's holdings in AT&T, Exxon, and Texaco. Mr. Garrett advised Ms. Sposato that Mr. Meese had indicated to him on January 10, 1985, that, if after the Department of Justice attorneys conducted their analysis of his financial interests they felt any of the holdings were troublesome, Mr. and Mrs. Meese would divest themselves of any such holdings.

In the 1985 review process, staff attorneys viewed as potentially troublesome Mr. and Mrs. Meese's interests in

T&T, New York Telephone, Southwestern Bell Telephone, and the seven RBOCs. Within the Department of Justice, the Deputy Attorney General's Office, the Land and Natural Resources Division, the Civil Division, the Antitrust Division and the Office of Legal Policy recommended that Mr. Meese sell his telephone company holdings, because the AT&T divestiture was an ongoing and highly visible matter in the Department which would] undoubtedly require the attention of the Attorney General." Divestiture was the preferred course; since Mr. Meese's participation in important matters was preferable to recusal.

On January 23, 1985, Mr. Meese sent Mr. Martin a letter setting forth a new ethics agreement. This letter was based on the 1984 draft. The language was slightly broader; the sentence that emphasized the need for balancing the avoidance of a conflict of interest with the discharge of Mr. Meese's duties as Attorney General was removed.

On January 24, 1985, a letter was sent to Mr. Martin from Anthony C. Liotta, the Assistant Attorney General for Administration and therefore the Department's highest ranking DAEO. Mr. Martin forwarded that letter with a letter of his own to Strom Thurmond, Chairman of the Senate Judiciary Committee. In their letters, both Messrs. Martin and Liotta mentioned Mr. Meese's statement that he intended to sell certain securities, among them AT&T and the RBOC shares.

These letters were sent pursuant to the regulatory requirements relating to ethics agreements, 5 CFR 734.804.

Confirmation hearings on Mr. Meese's appointment were held from January 29 through 31, 1985. At the hearings, Mr. Meese stated:

I think that in the course of the 4 years, I have learned a great deal about how people view things, or how people might view things. And I can assure you that I have a much higher level of sensitivity to these matters now than I did when I arrived in Washington. And I can assure you that I would take great pains to avoid any kind of a situation or circumstance that might give rise to a misunderstanding or a misinterpretation of my acts or what I intended.

On February 22, 1985, Mr. Meese's nomination as Attorney General was confirmed by the Senate.

On March 7, 1985, Ralph W. Tarr, Acting Assistant Attorney General for OLC, sent Mr. Meese a memorandum listing the promises made by Mr. Meese during his confirmation hearings. Mr. Meese had again promised that he would sell certain securities, including AT&T and RBOC stock, that he would advise OLC and OPR of all financial holdings, and that he would file financial disclosure statements annually with OGE.

On March 13, 1985, Mr. Tarr sent Mr. Meese a memorandum in response to Mr. Meese's request at a March 6, 1985, meeting for an outline of applicable ethical standards. The memorandum delineated the nature and required timing of

Mr. Meese's ethics commitments. These included sale of the indicated stocks and circulation within the Department of Justice of a recusal policy statement. Action on these commitments was required within 90 days of confirmation; the deadline was May 24, 1985.

Mr. Tarr also sent a more extensive outline of relevant disqualification principles to Mr. Meese on March 13, 1985, and on April 29, 1985, a draft recusal policy statement was circulated. Mr. Tarr's cover memorandum accompanying the draft asked Mr. Meese to "please note that this draft assumes that you will have sold the stocks and bonds" designated in the January 23, 1985 ethics agreement "before the recusal policy is circulated."

C. May 23, 1985 -- Transfer of Property

Mr. and Mrs. Meese's AT&T holdings, 34 of their 51 shares in BellSouth, and their non-RBOC telephone company securities were sent to W. Franklyn Chinn before May 22, 1985, and sold in late May to early June 1985, through Bear, Stearns & Co.^{162/} The holdings of Mr. and Mrs. Meese in the RBOCs were not liquidated along with their other securities because

^{162/} Effective May 23, 1985, Mr. and Mrs. Meese formed a limited partnership, Meese Partners, with Financial Management International, Inc., a company wholly owned by Mr. Chinn. The proceeds for the securities sent to Mr. Chinn were placed in the Meese Partners accounts. The Meese Partners agreement and Mr. Chinn's activities as the Meeses' money manager are discussed in Part Two of this Report.

the stock certificates could not be located. The missing certificates represented Mr. and Mrs. Meese's remaining telecommunications holdings: 17 shares in each of the seven RBOCs, with a total market value of approximately \$8,900 at that time.

According to John N. Richardson, Jr., the Special Assistant in the Office of the Attorney General with responsibility for ethics matters, Mr. Meese informed him of the missing certificates a few days before the deadline for compliance with Mr. Meese's ethics agreement. Based on Mr. Meese's instructions, Mr. Richardson dictated a draft document to transfer Mr. and Mrs. Meese's beneficial interest in the stock to a third party. He had it typed, edited it quickly, and brought it to Mr. Meese to sign.

Mr. Richardson's understanding of the transfer document was that it constituted an outright assignment of all the right, title and interest of Mr. and Mrs. Meese in the RBOC stock to Mr. Chinn "except for the technical legal title." He did no research to determine the requirements for a legally valid transfer. Mr. Richardson assumed that the proceeds from the sale of Mr. and Mrs. Meese's securities would be invested in a mutual fund, and knew of no relationship between any such fund and Mr. Chinn, the purported recipient of the beneficial interest in the stock.

Mr. and Mrs. Meese executed the Transfer of Property document, which was dated May 23, 1985. The transfer document read as follows:

TRANSFER OF PROPERTY

The undersigned, EDWIN MEESE III and URSULA MEESE (hereinafter known as "transferors"), hereby transfer to FRANK CHINN (hereinafter known as "transferee") all right, title and interest to the stocks listed below:

17 shares	Ameritech
17 shares	Bell Atlantic
17 shares	Bell South
17 shares	NYNEX
17 shares	Pacific Telesis
17 shares	Southwestern Bell
17 shares	U.S. West

Transferors shall provide to transferee the stock certificates representing the above-listed securities as soon as they are available.

The transfer is made with the understanding that the transferee shall dispose of the above-listed securities in such manner as he, in his sole discretion [sic], deems appropriate and shall transfer the proceeds of such sale to an account maintained by him for the benefit of transferors.

23 May 1985
Date

Edwin Meese III [signature]
Edwin Meese III

Ursula Meese [signature]
Ursula Meese

* * *

Mr. Meese's telephone records indicated that he attempted unsuccessfully to call Mr. Chinn on May 24, 1985. Mr. Meese could not reach Mr. Chinn, and, accordingly, did not discuss the Transfer of Property document with Mr. Chinn before sending it. Mr. Meese attached a cover note to the

signed Transfer of Property that stated: "Dear Frank: Enclosed is a document transferring to you various shares of stock. I will discuss this further with you by telephone as soon as convenient. Thank you, Edwin Meese III."

Mr. Meese assumed that Mr. Chinn would agree to be the transferee, as Mr. Meese had "designated him as the man to take care of all of my financial matters pertaining to any securities." When asked whether Mr. Chinn would have had to agree to the arrangement for it to be valid, Mr. Meese stated: "Well, he had already agreed to take care of all of the stock transactions, so I assumed that there was no problem."

D. Circulation of Recusal Policy and Followup

In his final recusal policy statement, dated May 24, 1985, Mr. Meese recused himself from participation in matters involving John R. McKean, Raymond J. Donovan, Mr. Meese's retirement plans, Mr. Stein's investigation, and the attorneys that represented Mr. Meese in connection with that investigation. A list of matters in which Mr. and Mrs. Meese retained a financial interest was provided to assist Department of Justice personnel "in identifying matters from which I may be disqualified." Also, Mr. Meese stated that stocks on an attached list had been divested and therefore did not present conflict of interest concerns. Mr. Meese testified that the list was intended to include all of Mr. and Mrs. Meese's security holdings. The list included their AT&T and RBOC securities.

On May 24, 1985, Mr. Meese's recusal policy was circulated at the Department of Justice. On the same day, Mr. Meese sent a memorandum to W. Lawrence Wallace, who had succeeded Mr. Liotta as Assistant Attorney General for Administration and therefore was the Department of Justice DAED. The memorandum stated that the securities listed in the ethics agreement, including the RBOC stock, had been divested. The letter to Mr. Wallace made no mention of the Transfer of Property document executed the day before.

Shortly after the May 24, 1985 deadline for fulfillment of Mr. Meese's ethics commitments, Mr. Richardson told Ms. Sposato that Mr. Meese had divested the AT&T and RBOC holdings. Ms. Sposato therefore was surprised to learn in the fall of 1987 of the Transfer of Property document.^{163/} Ms. Sposato informed the office of independent counsel that it would have been appropriate for someone in the Office of the Attorney General to seek advice on the validity of the transfer, and on whether it fulfilled the Attorney General's ethics commitments.

^{163/} In August 1984, Ms. Sposato had moved from the Office of Legal Counsel to become General Counsel of the Justice Management Division. Part of her job involved assisting Mr. Liotta and his successor, Mr. Wallace, in their role as DAEO. Ms. Sposato had thus been involved in the spring of 1985 in the process of ensuring that Mr. Meese's ethics agreement commitments had been met.

On May 28, 1985, Mr. Wallace sent a letter to Mr. Martin, confirming that Mr. Meese had fulfilled the commitments he had made during the confirmation hearings.

E. Receipt of Dividends

From the date of the Transfer of Property document, May 23, 1985, until the sale of the RBOC shares in September 1987, Mr. and Mrs. Meese continued to receive dividend checks, RBOC literature and reports, and new stock certificates resulting from stock splits.

The first dividend checks received from the seven RBOCs after the May 23, 1985 events were dated August 1, 1985. Mr. and Mrs. Meese continued to receive quarterly dividend checks and quarterly reports from each of the RBOCs through August 1, 1987. All dividend checks in that two-year period were held until September 1987, and then deposited into the Meeses' joint money market account at Merrill Lynch.

After the RBOCs announced stock splits, Mr. and Mrs. Meese received new stock certificates from the RBOCs after May 1985. These certificates arrived in April, May and June of 1986 as well as in January, March and May of 1987. Mr. and Mrs. Meese also received annual reports and proxy solicitations from the RBOCs.

F. Mr. Meese's Understanding of His Financial Interest in the RBOC Stock

Mr. Meese testified to his understanding of the Transfer of Property document. Mr. Meese explained that

Mr. Chinn did not pay the Meeses for the stock, because "it was based upon the agreement here that he would dispose of them. That was the consideration that I saw for the agreement."

Independent Counsel: It is your position that this document did not create any specific liability for Mr. Chinn to pay you the value of the stock as of the date of the document? It was subject to sale of the stocks and disposition of the proceeds?

Mr. Meese: Well, he had an obligation to -- and, again, now we're talking not about the document but about legal theory. I believe, and I didn't think much about it at the time, but I think legally he was probably obligated to pay me whatever value the stock had at the time that it was transferred to him, or those proceeds.

Now, if he had waited and sold the stock later on at a loss, at an amount less than this date, I don't think he would have been obligated to pay me the difference because there was no requirement in here that he sell it immediately. He could do it as he deemed appropriate.

Independent Counsel: Do you mean if he had sold it at a loss later, you would have gotten the proceeds including the loss?

Mr. Meese: Right.

Independent Counsel: Does that also apply to a gain if he had sold them later?

Mr. Meese: Well, there it's different. I think it probably would be different because since it came to him on the 23rd of May, if he sold it later, I don't think I would have been entitled to the gain, but I'm not sure.

Independent Counsel: How can it be inconsistent?

Mr. Meese: Well, mainly because it was due to his sole discretion. He could not be obligated to give me more than what I gave him, than what I transferred to him on him on the 23rd of May. At least he would have a decent theory of that.

Independent Counsel: In the end he did give you more than what was transferred on May 23, 1985; is that correct?

Mr. Meese: No. In the end he just transferred the -- this whole ownership back You see, the whole idea at that time was, I thought that within a week or two, or a very short time, we would be able to find the certificates, and so that then, as soon as those certificates were sent to him, he would be able to go forward with the normal transaction of selling the stock as he had the others. As it turned out, as you know, we were not able to find the certificates, and, therefore, had to get the replacements. Had we not terminated the trust, as soon as I got those replacement certificates, I would have sent them to Mr. Chinn, and at that time he would have sold them.

Independent Counsel: Then what would have happened with the proceeds?

Mr. Meese: And then I presume that the proceeds of that, of that sale would probably have been turned over to the account he was maintaining for our benefit, which by that time turned out to be the Meese Partnerships.

Independent Counsel: The proceeds in full from the sale at that time?

Mr. Meese: Well, I don't -- I would assume that he probably would have, but I don't know whether the proceeds would have been more or less than the value at the time of the transfer. So the issue never came up, and actually I didn't go into all of these details even in my thought processes.

Mr. Meese understood that he and Mrs. Meese retained the risk of loss: He did not think Mr. Chinn was taking any risk in accepting the transfer, and "it was my intention not to have him [Mr. Chinn] take any risk." He knew, from the continued receipt of dividends, quarterly reports and annual reports from all seven RBOCs, that he and Mrs. Meese retained legal title to the stock.

**G. Mr. and Mrs. Meese's Efforts
To Replace the RBOC Stock Certificates**

Mr. and Mrs. Meese testified that after the Transfer of Property document was executed they continued to search for the missing stock certificates. At that time, as he stated in his grand jury testimony, Mr. Meese thought that "within a week or two, or a very short time," they would be able to find the certificates. As months went by, Mr. and Mrs. Meese did not find the certificates, and "it was only after the Christmas vacation period of 1985 that I [Mr. Meese] completed what I thought was a complete search of the house."

In early 1986, Mr. Meese contacted American Transtech, the company that handled the issuance of stock certificates for the RBOCs, to request information about the stock certificate replacement process. American Transtech sent Mr. and Mrs. Meese forms which they completed, had notarized, and returned to American Transtech in March 1986.

American Transtech discovered that the wrong forms had been sent to Mr. and Mrs. Meese. Mr. and Mrs. Meese were immediately sent a package of forms, including the correctly filled-out forms (to be resubmitted) and new forms (to be completed).

Mr. and Mrs. Meese resubmitted the package of forms in September 1986. On September 12, 1986, American Transtech personnel discovered that Mr. and Mrs. Meese had not completed

all of the required forms sent to them. The forms were promptly returned to them for completion.

Mr. and Mrs. Meese completed the forms in late May 1987, about two weeks after this investigation began. Mr. Meese testified that the delays from the time of receipt of the forms until they were sent to American Transtech were because he was very busy -- it was "just a matter of getting things done."

Letters from American Transtech confirmed that the forms were received from the Meeses as of June 3, 1987. The replacement certificates, dated June 11 and 12, 1987, promptly were mailed to Mr. and Mrs. Meese.

H. July 6, 1987 -- Re-Transfer of Property

Mr. Meese terminated his investment relationship with Mr. Chinn on May 5, 1987, effective June 30, 1987. On July 6, 1987, Mr. Meese wrote Mr. Chinn to resolve "one matter that require[d] attention," the Transfer of Property arrangement. Mr. Meese wrote that his attempts to obtain replacement stock certificates to send to Mr. Chinn had been "unsuccessful to date, due to various administrative record-keeping problems, not the least of which is the limited amount of time that I have been able to devote to my own personal finances over the last two years."

When originally asked about this matter, Mr. Meese testified that the replacement certificates arrived while he was away, in July or August of 1987. However, the evidence

indicates that Mr. Meese received the replacement certificates in June of 1987, before he wrote the July 6, 1987 letter to Mr. Chinn. In later testimony, Mr. Meese explained that he did not know he had received the replacement certificates in June 1987 because he was "keeping everything [he] received from the telephone company unopened." Thus, when Mr. Meese wrote the July 6, 1987 letter, and as he was preparing for July 9, 1987 Congressional hearings where he knew he would be questioned on this matter, he had in his possession the replacement stock certificates, but apparently had not opened the envelopes.

Mr. Meese's July 6, 1987 letter to Mr. Chinn stated that Mr. Meese had been advised by his counsel "that it would be proper" for Mr. Chinn to retransfer the right, title and interest in the RBOC stock to the Meeses. The letter stated that the final partnership distribution from Meese Partners would consist of "(a) the monetary proceeds of that partnership, and (b) the Transfer of Property rights in the 'Baby Bell' stocks which have been held by you for the partnership since 23 May 1985."

Mr. Meese's letter to Mr. Chinn raised the matter of the dividend checks and stock dividends Mr. and Mrs. Meese had received since May 1985:

We did not deposit these checks. We held them and the stock dividends with the intention of sending them to you for deposit when we received the new stock certificates. The partnership has been terminated, and we

are still holding these checks and stock dividends. If you agree that they should revert to us together with the "Baby Bell" stock, as provided in the concluding paragraph of the enclosed document, we will be able to deposit them when the retransfer is completed.

On July 9, 1987, Mr. Chinn signed the Re-Transfer of Property document sent to him by Mr. Meese.

On July 9, 1987, the RBOC stock was worth more than \$13,000. Since May 23, 1985, dividends of in excess of \$1500 had been sent to the Meeses. In September and October of 1987, all of the RBOC shares were sold through the Meeses' Merrill Lynch money market account, and the dividend checks were deposited in the account. The total proceeds from stock sales and dividends were approximately \$15,000.

The independent counsel has concluded that the Transfer of Property document did not constitute an effective transfer of beneficial interest in the RBOC stocks to Mr. Chinn. Mr. and Mrs. Meese retained an interest in the stocks until the fall of 1987, when they were were sold and the Meeses received the sales proceeds. Mr. Chinn did not have the beneficial interest in the stocks; he was acting as a trustee or agent to hold the stocks for the Meeses, who under the terms of the document would (and did) receive any gain (or loss) in the value of the stocks.

IV. 1986 -- THE SECTION 208(b) WAIVER

In late 1986, employees of the Office of the Attorney General were aware that Mr. Meese had not yet received replacement certificates for the RBOC stock. The Department of Justice was scheduled to present the first triennial report concerning the MFJ to the Court in January 1987.

In early November 1986, Department of Justice consultant Peter W. Huber submitted a report on the telecommunications industry to the Antitrust Division. This report was the basis for the Department's report to the Court. Some weeks later, the Antitrust Division sent a draft of the Department's Report to Mr. Meese for review and eventual approval. At that time, Mr. Cribb, Counselor to the Attorney General, was aware that Mr. Meese continued to hold at least legal title in the RBOCs. Mr. Cribb decided that the question of potential conflicts of interest should be resolved prior to Mr. Meese's review of the draft. Mr. Cribb informed the office of independent counsel that he "was withholding from the Attorney General the substantive decision on telecommunications policy on grounds that [Mr. Cribb] was aware there had been an incomplete divestiture." Mr. Cribb asked Mr. Richardson whether it would be advisable for Mr. Meese to obtain a waiver to permit his participation in the preparation of the report to the Court.

Mr. Cribb, Mr. Richardson, and Douglas W. Kmiec, Deputy Assistant Attorney General in the Office of Legal Counsel, told the office of independent counsel that they thought Mr. Meese should be particularly sensitive to any appearance of impropriety. Both Messrs. Cribb and Richardson were of the view that seeking the waiver was an act of caution, and reflected extreme sensitivity to an appearance of a conflict of interest.

A. Preparation of the Waiver Request

On December 15, 1986, Mr. Richardson called Mr. Kmiec and asked him to prepare a request to the White House for a waiver. Charles J. Cooper, the Assistant Attorney General for OLC and the person Mr. Richardson normally would have spoken to, was recused from participation in AT&T matters. Mr. Richardson told Mr. Kmiec that the timing was extremely important. Mr. Kmiec and his associate, Senior Counsel Margaret C. Love, worked late into the night on the waiver request.

Mr. Kmiec stated that Mr. Richardson was somewhat vague about the details of the Transfer of Property document that Mr. Richardson had prepared in May 1985. The resulting draft waiver request forwarded to Mr. Richardson, according to Mr. Kmiec, was a "sketchy document prepared in a hurry." Moreover, Mr. Kmiec later found that "some of the facts John Richardson was operating under turned out to be in error."

Mr. Kmiec called Charles F. Rule, the Assistant Attorney General for Antitrust, to ask him whether the financial impact of the Department of Justice's report to the Court would be substantial, assuming Mr. Meese owned the RBOC stock. Mr. Rule informed him that the report was very important. Mr. Rule believed that, assuming Mr. Meese owned the RBOC stocks, there would be a potential conflict of interest, and that a waiver should be sought.

Mr. Kmiec understood that this was the first time Mr. Meese was being asked to participate in any telecommunications-related matters.

The OLC draft request for a section 208(b) waiver was based on information provided by Mr. Richardson. The draft waiver request was sent on December 17, 1986 from Mr. Meese to Peter J. Wallison, who as Counsel to the President was the official empowered to issue a waiver to the Attorney General. The draft waiver request stated that, although Mr. and Mrs. Meese retained title to stock in certain telephone companies, they had sold "at market value with no right of repurchase" all beneficial interest in the stocks. There was "thus no possibility that [Mr. Meese's] participation in these discussions might affect [his] financial interests."

OLC was not provided a copy of the Transfer of Property document. Mr. Kmiec requested a copy, but Mr. Richardson could not find one. No one at the OLC knew

that Mr. Chinn, the transferee, was the owner of FMI, the general partner in the Meese Partners limited partnership. Mr. Kmiec believed that Mr. Meese had no ongoing financial relationship with the transferee. Mr. Richardson recalled informing OLC that Mr. Meese had no family relationship with the transferee, but did not recall being questioned about a partnership or other relationship.

The suggested basis for the waiver requested from Mr. Wallison was that, since Mr. and Mrs. Meese held only legal title to the stock, the waiver was appropriate because there was, according to Mr. Richardson, "no chance that the discussions will affect any financial interest of [Mr. and Mrs. Meese]." Mr. Richardson and Mr. Kmiec confirmed that, in the original discussions about the Transfer of Property document, their understanding was that the transfer of beneficial interest was effectively a sale. Mr. Kmiec stated that, when he finally read about the Transfer of Property document in the press some eight months later, he was surprised to discover that it was not a sale document. He regarded it instead as a trust arrangement involving transfer of legal title with the retention of beneficial interest. Mr. Kmiec informed the office of independent counsel that, when he saw the actual document after the fact, he thought it was "particularly good that [they] asked that the Attorney General get a waiver."

**B. The Waiver Request Is Sent to the
Office of the Counsel to the President**

When the waiver request arrived at Counsel's Office at the White House on December 17, 1986, Deputy Counsel Jay B. Stephens assigned it to Associate Counsel Robert M. Kruger. Mr. Kruger recalled that he received a copy of a draft memorandum from Mr. Meese to Mr. Wallison, as well as a draft waiver from Mr. Wallison to Mr. Meese with a cover note from Mr. Stephens requesting that he review the materials and begin the appropriate action. Mr. Stephens' cover note to Mr. Kruger stated "you may wish to talk to Doug Kmiec, OLC, and check general issue hypothetically with OGE."^{164/} Mr. Kruger first called Mr. Kmiec at OLC and questioned him on the waiver request. He also called Jane Ley at OGE and discussed hypothetically the questions that he had identified relating to the waiver request.

Mr. Kruger and Ms. Ley first considered the issues relating to the suggested basis for the waiver. Mr. Wallison had been requested to grant the waiver on the basis that Mr. Meese did not have any financial interest in the stock once he had transferred the beneficial interest. Ms. Ley and Mr. Kruger developed a list of "sub-questions" relating to the validity of the transfer. These questions were: first, whether the transfer had been made at a fixed price or at the

^{164/} The Office of Counsel to the President frequently consulted with OGE on such issues.

fair market value of the stocks; second, whether there was a document effecting the transfer and reflecting its terms; third, whether the document contained a pledge to sign over the shares once the certificates became available; and fourth, whether the dividends on the shares would be turned over to the new owner or would be retained by the transferors. Mr. Kruger and Ms. Ley also discussed the number, value and type of shares.

At some point early in his consideration of the request, Mr. Kruger became aware of the 1982 waiver Mr. Meese had received from Mr. Fielding, then Counsel to the President. He obtained a copy of the office file relating to the earlier waiver request.

Mr. Kruger also tried to contact Mr. Richardson to seek factual information to support the waiver request. Mr. Kruger learned that Mr. Richardson, rather than Mr. Kmiec, was the appropriate source of factual information.

From his study of the 1982 waiver, Mr. Kruger realized that an alternative, de minimis basis for the waiver was available. It also occurred to Mr. Kruger that there was at least a possibility that Mr. Meese did not need a second waiver because the first waiver might be adequate. However, he decided that reliance on the 1982 waiver would raise a number of possible problems. First, there had been a substantial lapse of time -- over four years. Second, Mr. Meese held the position of Attorney General; he was no longer Counselor to the President. Third, the securities

holdings had changed. Fourth, in 1986, the matters in which Mr. Meese sought to participate were different from the matters with respect to which the 1982 waiver was granted.^{165/} Ms. Ley told the office of independent counsel that, in her opinion, the 1982 waiver was not valid after Mr. Meese became Attorney General.

After reviewing the file from the previous waiver, and requesting further information from Messrs. Kmiec and Richardson, Mr. Kruger assembled all the available information, and waited for a response from Mr. Richardson concerning the exact nature of the Meeses' holdings in the RBOCs. Mr. Kruger believed that Mr. Richardson first responded on December 29, 1986.

On January 6, 1987, Mr. Kmiec sent Mr. Kruger a copy of Mr. Meese's financial disclosure form for 1985. Mr. Kruger attempted to use the form to estimate the value of the stocks, and to assess the value of Mr. Meese's total portfolio. However, it was impossible to compute an accurate value for the stocks or the portfolio because the financial form presented only ranges of values for listed items. Mr. Kruger determined that the holdings could have been worth from \$7,000

^{165/} Mr. Fielding, Counsel to the President from 1981 to 1986, informed the office of independent counsel of his personal opinion that the 1982 waiver he had issued to Mr. Meese was no longer valid to cover Mr. Meese's participation as Attorney General in telecommunications matters.

to \$35,000, and the portfolio value could have been anything between \$138,000 and \$405,000. Thus, the RBOC stock could have accounted for between two percent to 25 percent of Mr. Meese's total portfolio. Mr. Kruger decided that he could not determine the value of the stock from that information, and, therefore could not judge whether or not the holdings were de minimis. His notes reflected his decision to "go back to the transfer of beneficial title," the original basis for the requested waiver.

Mr. Kruger's notes reflected that on the same day, January 6, 1987, he spoke with Mr. Kmiec and asked him to request a copy of the Transfer of Property document from Mr. Richardson. Mr. Kruger stated that he thought this was "about the second or third time" he had tried to obtain a copy of the document from Mr. Richardson.

Mr. Kruger indicated that he spoke with Mr. Richardson sometime shortly after January 6, 1987, about his unanswered questions relating to the transfer. According to Mr. Kruger's notes, Mr. Richardson said that the dividends went to the "holder," meaning the transferee. However, Mr. Richardson still could not locate a copy of the actual transfer document. Mr. Kruger did not believe his office could proceed with the transfer of interest basis for the waiver without a copy of the Transfer of Property document. A copy was never provided, and the transfer of interest basis for a waiver could not be pursued.

Mr. Kruger knew from the outset of the time pressure relating to the waiver request, but, as of January 6, 1987, he did not have sufficient information to proceed on either suggested basis. In a telephone conversation with Mr. Richardson on January 20, 1987, Mr. Richardson asked whether Mr. Kruger had received a memorandum from him. Mr. Kruger's notes reflected that he had not yet received the memorandum.

Later that day, Mr. Kruger finally received Mr. Richardson's memorandum concerning the value of Mr. Meese's RBOC holdings. The total value of the stock was stated to be \$9,611.35. Mr. Richardson testified that [

GRAND JURY MATERIAL DELETED

]

The actual value of the stock on January 15, 1987 was \$13,972, 45 percent higher than the stated value. Mr. Richardson's method was inaccurate because the Meeses owned additional shares resulting from stock splits by four of the RBOCs. These shares were not included in his totals. Thus, Mr. Richardson understated the total value of the stocks.

Mr. Richardson based his estimate of Mr. Meese's net worth on the statement prepared in January 1985 for the Senate Judiciary Committee in connection with Mr. Meese's

confirmation hearings. At that time, according to Mr. Richardson, Mr. Meese's net worth was approximately \$300,000. Mr. Richardson "added a \$50,000 cushion" to that estimate to allow for growth, and informed Mr. Kruger that Mr. Meese's net worth was "estimated at between \$300,000 and \$350,000."

Mr. Richardson testified that [

GRAND JURY MATERIAL DELETED

]

Based on the available information, Mr. Kruger concluded that a waiver could be granted on the same basis as the 1982 waiver, a de minimis basis, because the value of the stocks as determined by Mr. Richardson was less than the value of Mr. Meese's telephone holdings in 1982. Mr. Kruger also calculated the percentage that the stocks constituted of Mr. Meese's entire portfolio. Mr. Kruger noted that Mr. Meese's net worth was higher, while the value of the securities was lower. Therefore, in 1987, the holdings constituted a smaller percentage of net worth than did Mr. and Mrs. Meese's AT&T holdings in 1982. According to the information available to Mr. Kruger, the value of the holdings was within the threshold set by the 1982 waiver.

Mr. Kruger stated that, if he had known that the numbers were inaccurate and that the threshold standards he used may in fact have been exceeded, he might have proceeded somewhat differently with the waiver request. He also stated

that, had he known of any possible partnership connection between Mr. Meese and Mr. Chinn, he would have tried to clear up that confusion. However, he declined to comment on what he would have done had he been aware of the actual facts.

Mr. Kruger drafted a waiver to be granted by Mr. Wallison, and sent the draft to Mr. Wallison's deputy on January 20, 1987.

Mr. Wallison stated that he relied on staff investigation of matters such as this. He noted that waiver requests were infrequent, and that they were basically a judgment call. He personally believed that it was preferable, "where there was a sound basis for doing so," to grant a waiver to enable the government official in question to discharge his or her official responsibilities with respect to the matter under consideration.

Mr. Wallison told the office of independent counsel that he was not informed of Mr. Meese's earlier commitments to divest his telephone industry holdings, nor was he informed of any telecommunications-related activities on the part of Mr. Meese prior to the waiver request. Mr. Wallison stated that the waiver application was "obviously a good deal more complex" than the way it was presented. He said: "we believed we were being told everything that was significant. I assumed a lawyer knows when he is or is not telling something significant to another lawyer's decision."

Mr. Wallison stated that, had he known that the stock value and net worth information upon which the recommendation was based were inaccurate, his decision might have been affected. However, he declined to comment on whether he would have acted differently in a situation that was different from what it was indicated to be.

C. January 20, 1987 -- The Waiver Is Granted

On January 20, 1987, Mr. Wallison granted Mr. Meese a waiver from the applicability of 18 U.S.C. § 208(a), permitting Mr. Meese's participation in "meetings to discuss the consent decree." The waiver, in the form of a memorandum from Mr. Wallison to Mr. Meese, reproduced the inaccurate information about Mr. and Mrs. Meese's stockholdings provided Mr. Kruger by Mr. Richardson. It also stated: "You advise that you have sold at market value with no right of purchase all beneficial interest in these stocks You indicate that you have no financial interest in or immediate family relationship with the new owner of the stock." Mr. Wallison concluded that Mr. Meese's interests in the RBOCs were not likely "either to influence [Mr. Meese] in [his] discussions related to the consent decree involving the telephone industry or to cause the public to question [his] integrity on this issue." The waiver did not cover past conduct; it applied only to future conduct.

Mr. Meese may have been able to obtain a Section 208(b) waiver if accurate facts had been presented to Messrs.

Fruger and Wallison. However, as noted above, the waiver that was obtained was based on inaccurate information. The value of the holdings was understated. In addition, the assumptions provided to the White House concerning the Transfer of property document -- that the sale was at market value and that Mr. Meese had no financial interest in the new owner of the stock -- were questionable.

7. **MR. MEESE'S INVOLVEMENT AS ATTORNEY GENERAL
IN TELECOMMUNICATIONS INDUSTRY ISSUES**

From the time Mr. Meese became Attorney General in February 1985, until he obtained the January 1987 waiver from Mr. Wallison allowing his participation in telecommunications matters, Mr. Meese participated in a number of significant ways in matters relating to the telecommunications industry.

Specifically, the independent counsel has concluded that Mr. Meese personally and substantially participated in at least two "particular matters" as that term is defined in 18 U.S.C. § 208.^{166/}

^{166/} A particular matter under Section 208 can include a judicial or other proceeding, application, request or a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter. This list of matters was intended to be comprehensive of all matters that come before a Federal department or agency." Hearings on Federal Conflict of Interest Legislation before the Antitrust Subcommittee of the House Judiciary Committee, 87th Cong., 1st Sess. 38 (1961).

**A. Mr. Meese's Involvement In
Telecommunications Matters
Within the Department of Justice**

**1. Initial Telecommunications-Related
Briefings**

In late February 1985, Mr. Meese was briefed by top officials of the Antitrust Division, as he was briefed about the activities of all the Department of Justice components. The briefing was conducted by Assistant Attorney General J. Paul McGrath. Mr. McGrath's Deputy at that time, Charles F. Rule, expressed his belief to the office of independent counsel that AT&T matters were not discussed at that meeting, except in a very general way, because Mr. McGrath was recused from AT&T and other telecommunications matters.

Among the other activities undertaken to apprise the new Attorney General of important matters, the Antitrust Division prepared a Briefing Book in March 1985. The Briefing Book was lengthy; among the issues covered was the AT&T divestiture. The 1984 divestiture agreement was explained and enforcement issues still facing the Antitrust Division under the terms of the MFJ were described.

2. Nomination of Douglas H. Ginsburg

In early 1985, the Office of the Attorney General was also in the process of finding a new Assistant Attorney General for Antitrust. Mr. Meese asked E. Robert Wallach for assistance with the interview process. Douglas H. Ginsburg,

the final nominee for the position, was among the applicants for a variety of positions interviewed by Mr. Wallach.

Mr. Ginsburg was interviewed by Acting Deputy Attorney General, D. Lowell Jensen, Mr. Cribb, and Mr. Wallach. Mr. Ginsburg recalled that he discussed with Mr. Wallach the three main substantive issues he believed the Antitrust Division should address. One of the three was the Department's approach to the scheduled January 1987 report to the Court about the MFJ. Mr. Ginsburg assumed that the people who interviewed him reported his policy positions and concerns to Mr. Meese. Mr. Ginsburg received a call from Mr. Meese in June 1985 informing him of his nomination.

3. April 1985 -- The Presubscription Issue

By memorandum dated April 4, 1985, Mr. Rule, who with the departure of Mr. McGrath was now the Acting Assistant Attorney General for the Antitrust Division, informed Mr. Meese of comments that the Antitrust Division planned to file with the Federal Communications Commission (FCC) concerning long distance service "presubscription."

The issue covered by the memorandum, which was of concern to the Antitrust Division throughout the spring of 1985, related to RBOC customers who did not affirmatively select a long distance telephone carrier after the AT&T breakup. Customers who had not specifically chosen a long-distance carrier such as AT&T, MCI or Sprint were regularly assigned AT&T as a "default" carrier. The question

was whether the RBOCs were giving undue preference to AT&T by so assigning customers who made no choice. The FCC was considering a ballot system as an alternative to the default system used by the RBOCs. The comments that the Antitrust Division planned to file would encourage the FCC to support that ballot-system alternative.

4. Biweekly Reports

In addition to specific information memoranda on particular issues that were important to the Antitrust Division, or of which the Assistant Attorney General for Antitrust believed the Attorney General should be informed, Mr. Meese was kept informed by a Biweekly Report, actually circulated every three to four weeks. Biweekly Reports summarized major cases, actions, or matters before the Antitrust Division for the information of the Attorney General and the Deputy Attorney General. On May 9, 1985, Mr. Meese received a Biweekly Report that discussed the FCC filing also described in the April 4, 1985 memorandum, and informed Mr. Meese that the comments had been filed with the FCC as planned.

5. Information on AT&T-Related Filings

On May 13, 1985, Mr. Meese received an information memorandum from Mr. Rule suggesting responses that Mr. Meese could give to questions concerning two recent AT&T-related FCC filings. One was the FCC filing recommending the ballot and

allocation procedure discussed in earlier memoranda. The second FCC filing recommended that AT&T be relieved of separate subsidiary requirements for AT&T's provision of customer premises equipment. This second recommendation was favorable to AT&T. At this time, Mr. and Mrs. Meese still owned AT&T securities.

According to Mr. Rule, this memorandum about the Antitrust Division filings exemplified the information that the Division provided the Attorney General. Whenever an issue was in the public eye, the Antitrust Division would try to prepare him for questions. Messrs. Rule and Ginsburg informed the office of independent counsel that Mr. Meese did not usually respond specifically to these information memoranda; he gave the Assistant Attorney General for Antitrust considerable latitude to act on antitrust matters.

6. Meeting with an RBOC Competitor

When a Chief Executive Officer or other company representative was scheduled to meet with Mr. Meese, it was the usual practice to provide him with background information. On June 10, 1985, Mr. Meese met with Paul H. Henson, the Chairman and CEO of United Telecommunications.^{167/} A June 8, 1985 memorandum from Mr. Rule to Mr. Meese entitled "Antitrust Division Matters That May Have an Impact on United Telecom, Inc." served to brief Mr. Meese for the June 10, 1985 meeting.

^{167/} This meeting is discussed infra.

**7. June 21, 1985 General Information
 Memorandum on the AT&T Case**

On June 21, 1985, Mr. Rule sent Mr. Meese a memorandum on the Department's role in enforcing the MFJ in the AT&T case. This memorandum, which was 12 1/2 pages long and single-spaced, was the first comprehensive written explanation Mr. Meese received as Attorney General of the role and activities of the Department of Justice relating to enforcement of the MFJ. The memorandum explained the background of the MFJ, the AT&T divestiture agreement, and the accompanying restrictions placed on the RBOCs. It described AT&T's obligations and interests under the MFJ as well as matters of concern to the RBOCs and restrictions on the RBOCs' post-divestiture activities. The main restrictions on the RBOCs -- their preclusion from new lines of business, from the provision of interexchange services and information services, and from the manufacturing of customer premises equipment -- were described in detail.

Among other things, the memorandum addressed specific concerns of the RBOCs, such as the RBOCs' complaints about Department of Justice enforcement of the MFJ waiver process, and the RBOCs' desire to conduct business overseas. The memorandum concluded that the policy of the Department of Justice "should continue to be to enforce the MFJ in an intelligent manner, consistent with our overall goal of replacing, to the greatest extent possible, the old regulatory regime in this industry with free market forces."

A June 25, 1985 executive summary followed the longer June 21, 1985 memorandum. Mr. Rule did not recall any specific request for this executive summary. He thought, in retrospect, that he was told that the original memorandum was too long and that it would be advisable to prepare a shorter executive summary.

In the same period, on June 24, 1985, Mr. Meese received an Antitrust Division Biweekly Report that briefly mentioned the result of the April 8, 1985 FCC filing. On May 31, 1985, the FCC adopted the long distance ballot and allocation procedures recommended by the Department of Justice.

8. **Background Information For July 9, 1985
Meeting with Pacific Telesis**

On July 8, 1985, Mr. Meese received a briefing package from John C. Harrison, his Special Assistant responsible for antitrust matters, along with an information memorandum from Mr. Rule concerning a scheduled July 9, 1985 meeting with representatives of Pacific Telesis, one of the RBOCs.^{168/} Mr. Rule's memorandum described the proposed acquisition by Pacific Telesis of Communications Industries, Inc.

^{168/} The Pacific Telesis meeting of July 1985 is discussed in greater detail infra.

Mr. Harrison's memorandum was an example of his practice relating to such matters. When Mr. Meese received correspondence from private sector entities, information memoranda from Department of Justice components or similar letters or documents, Mr. Harrison summarized the incoming information in a one-page cover memorandum. Mr. Harrison's July 8, 1985 memorandum summarized a letter from Pacific Telesis concerning the matters the company officials wished to discuss with Mr. Meese.

9. Late Summer 1985 Meetings and Memoranda

On July 23, 1985, Mr. Meese's schedule reflected a meeting with Mr. Ginsburg, who had been nominated to be Assistant Attorney General for Antitrust. On July 26, 1985, Mr. Meese's schedule listed a meeting with Mr. Ginsburg and Mr. Rule.

On August 7, 1985, Mr. Meese received a memorandum from Mr. Rule concerning Bell Atlantic matters pending before the Antitrust Division. Bell Atlantic had requested a meeting initially scheduled for late August. The meeting did not actually take place until December 1985.^{169/}

In late summer 1985, Mr. Rule had discussions with the Office of the Attorney General about the advisability of

^{169/} The meeting and correspondence with Bell Atlantic are discussed infra.

publishing a speech Mr. Rule planned to give concerning telecommunications matters. The Office of the Attorney General expressed reservations about publication because Mr. Rule was the Acting Assistant Attorney General at that time rather than the Assistant Attorney General. In accordance with the direction of the Office of the Attorney General, Mr. Rule gave the speech but did not publish a copy of it.

Mr. Ginsburg became Assistant Attorney General for Antitrust on September 3, 1985. Mr. Meese met with Mr. Ginsburg on that day. Neither Mr. Ginsburg nor Mr. Meese recalled any substantive discussion at that meeting; it was a courtesy meeting to welcome the new Assistant Attorney General.

On October 11, 1985, Mr. Ginsburg sent Mr. Meese an information memorandum concerning a report that was to be filed with the District Court concerning compliance with the AT&T decree.

**10. October 17, 1985 -- Long-Range
Telecommunications Policy Meeting**

**a. Memorandum to Mr. Meese
Concerning the Department's
Enforcement of and Long-Term
Approach to the MFJ**

On October 16, 1985, Mr. Meese received a memorandum from Mr. Ginsburg outlining Mr. Ginsburg's policy concerning regulation of the telecommunications industry and enforcement of the MFJ in the AT&T case. The memorandum prepared

Mr. Meese for an October 17, 1985 meeting on long-range Department policy on telecommunications matters. It was accompanied by a cover sheet requesting final action by the Attorney General on Mr. Ginsburg's proposed policy. A cover note from Mr. Harrison to Mr. Meese attached to Mr. Ginsburg's memorandum explained that the memorandum outlined Mr. Ginsburg's plan to move toward a substantially deregulated telecommunications system. In particular, Mr. Harrison's cover note informed Mr. Meese that part of Mr. Ginsburg's plan was "to lift or relax the restrictions currently imposed on the RBOCs by the Judgment." Mr. Harrison continued:

it is vital that we map out a strategy at this point.

In essence, Doug wants to signal the RBOCs that if they are good boys -- if they structure their systems and policies to maximize competition -- we will give them the opportunities they want. I think this is precisely the right approach.

Once you have decided on a course for telecommunications strategy, two procedural issues need to be addressed:

1. Should Doug meet with the RBOCs or should you, and how explicitly should we convey our message?
2. Do you want to sit down with Baldridge and go over the matter with him?

The package, starting with Mr. Harrison's cover note and continuing with Mr. Ginsburg's memorandum to the Attorney General, also included the June 21, 1985 memorandum from

Mr. Rule that Mr. Meese had received at least three times previously.

Mr. Ginsburg's memorandum explained his proposed policy approach. His approach was based on several premises enumerated in the memorandum, including the premise that the Antitrust Division should not be a "regulatory force" in the telecommunications industry. Mr. Ginsburg's delineation of the "major policy implication" flowing from his premises was that "the decree's line of business restrictions should be removed at the earliest appropriate time."

Mr. Ginsburg's policy conclusion within the memorandum was:

I propose to move toward removal of the decree's restrictions just as quickly as is reasonably prudent. This effort, however, requires careful study, planning, timing, and implementation. Moreover, such a strategy will not be met with universal approval -- Judge Greene, AT&T, and the other IX [interexchange] and IS [information services] providers are likely to resist such a change. We must therefore carefully develop the public record for our policy and cautiously (but steadily) pursue a course that removes the decree's restrictions as early as possible.

Mr. Ginsburg's memorandum continued with an eight-point plan for implementing this policy which included: first, a letter Mr. Ginsburg had recently written to Congressman John D. Dingell, Chairman of the House Committee on Energy and Commerce, concerning the telecommunications industry; second, a planned address by Mr. Ginsburg to the

Federal Communications Bar Association in December of 1985; and third, preparation of the January 1987 report to the Court for the scheduled triennial review of the AT&T consent decree.

On August 7, 1985, Chairman Dingell had written Mr. Meese about his concern that the line of business restrictions imposed on the RBOCs by the MFJ prevented the RBOCs from responding to consumer demand for advanced communications services. He stated that the MFJ was outdated and that the continued imposition of the restrictions on the RBOCs, particularly the prohibition against the provision of information services, was unwarranted.

Chairman Dingell requested that, to aid the Committee in reviewing the restrictions in conjunction with its ongoing oversight of national telecommunications policy, four issues be addressed "in detail." Two of the issues related to possible alternatives to the information services restriction. The third was a proposal that generic waivers be established to apply to all the RBOCs "to replace current case-by-case, company-by-company waivers." The fourth requested an examination of "circumstances which would justify elimination or substantial relaxation of the restrictions pertaining to equipment manufacturing and interexchange services." The four requests touched on all the restrictions on the RBOCs under the MFJ.

Chairman Dingell's letter was referred to the Antitrust Division. A lengthy response was signed on

September 19, 1985, by Mr. Ginsburg. Mr. Ginsburg noted that, while competitive circumstances had developed within the industry, the changes had not been so extensive as to warrant an immediate divergence from the path laid out by the MFJ. He defended the Department's processing of waiver requests, and stated that the Department was "willing to recommend a change in the Court's procedural requirements whereby [an RBOC] could enter a new line of business simply by 'piggy-backing' onto a specific order previously granted to another [RBOC] for the same line of business."

Mr. Ginsburg's letter to Chairman Dingell was considered a means to publicize the Department's policy concerning the MFJ. Mr. Meese did not respond personally to Chairman Dingell's letter, although it was addressed to him. However, he was aware, through the memorandum from and the meeting with Mr. Ginsburg, that the letter publicly explained the Department's policy on enforcement of the MFJ. That explanation included the rationale for the Department's support, at that time, of the Court's ban on the RBOCs' manufacturing customer premises equipment, providing information services, or supplying interexchange services. Through the memorandum and the meeting, Mr. Meese also was informed that Mr. Ginsburg planned to shift from supporting the restrictions to trying to have them relaxed or removed.

Mr. Ginsburg's letter to Chairman Dingell and his planned speech before the Federal Communications Bar

Association suggested a generic waiver procedure which would allow all of the RBOCs simultaneously to obtain waivers for entry into broadly defined lines of business.

Three of Mr. Ginsburg's eight listed points dealt specifically with the preparation of the January 1987 report. Mr. Ginsburg wanted to focus the attention of the Antitrust Division on the preparation of the January 1987 report to the Court. This report was viewed as a major milestone in the effort to eliminate the MFJ restrictions on the RBOCs.^{170/}

Mr. Meese testified before the grand jury that he received Mr. Ginsburg's October 17, 1985 memorandum, and stated: "I have, again, a general recollection of receiving a memo such as this. I don't have a detailed recollection of

^{170/} Mr. Rule informed the office of independent counsel that the report was important because it related to potential changes in the MFJ, which was "one of the most important decisions in the history of the Division." Mr. Cribb stated that the issue was "very important." Mr. Richardson called the January 1987 recommendations "one of the most important deregulation decisions the Administration would make."

Mr. Ginsburg stated that the process of planning and developing the January 1987 report had a "high visibility." He testified that [

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] Mr. Harrison stated that the RBOCs considered the triennial review as very important, particularly because it would potentially set an important precedent concerning administration and revision of the MFJ.

it, and I'm sure that I at least skimmed it either prior to or during the meeting."

b. **October 17, 1985 Long-Range
AT&T Policy Meeting**

As explained in Mr. Harrison's cover note, several issues were to be considered at the October 17, 1985 meeting. First, Mr. Ginsburg sought Mr. Meese's authorization to proceed with Mr. Ginsburg's approach to issues relating to the Department's role under the MFJ. Second, again as noted in Mr. Harrison's cover memorandum, a decision had to be made concerning RBOC requests to meet with Mr. Meese.

Neither Mr. Ginsburg nor Mr. Rule clearly recollected the October 17, 1985 meeting with Mr. Meese. Both stated that Mr. Ginsburg went briefly through the points of his memorandum, outlining his plan for dealing with consent decree matters through the January 1987 report.

Mr. Harrison's notes of the meeting reflected a discussion initiated by Mr. Meese concerning meetings requested by the RBOCs. Mr. Meese told Mr. Ginsburg that the RBOCs wanted to meet with him, and indicated that he was agreeable to such meetings if they were necessary.

There was some discussion between Mr. Meese and Mr. Ginsburg about what was being done to express publicly the position of the Department of Justice on telecommunications matters. Meetings with the RBOC officials were one way to accomplish that. (At the time of this meeting, Mr. Meese had

received meeting requests from Ameritech, Bell Atlantic and NYNEX, and had already met with representatives of Pacific Telesis.) Mr. Ginsburg preferred that the meetings be held within the Antitrust Division rather than with Mr. Meese. He believed that no constructive purpose would be served by such meetings, and that they were not an efficient use of the Attorney General's time. Mr. Harrison's notes indicated that Mr. Meese concluded that portion of the discussion with the suggestion that Mr. Ginsburg tell the RBOCs that he, Mr. Ginsburg, would meet with the RBOCs, and that Mr. Meese would meet with them if necessary. Messrs. Ginsburg, Rule and Harrison believed that Mr. Meese in fact was willing to meet with those officials.

After this initial discussion at the October 17, 1985 meeting about the RBOC meeting requests, Mr. Ginsburg discussed his plan for implementing telecommunications policy. Mr. Ginsburg gave a "general explanation of what was contained in the memorandum." According to Mr. Harrison, the October 17, 1985 meeting did not last very long.

In Mr. Rule's opinion, the October 17, 1985 meeting provided a useful opportunity to obtain the Attorney General's approval of the plan relating to the MFJ and also to the important January 1987 report to the Court. Mr. Rule recalled that at the meeting he informed Mr. Meese of the Antitrust Division's plan to set up a telecommunications study group to be headed by Peter W. Huber, a consultant. The Antitrust

Division wanted the study to be the factual basis for the January 1987 report to the Court.

Mr. Rule indicated to the office of independent counsel that Mr. Meese's interest in telecommunications matters was not substantial. As a general matter, he listened and asked occasional questions at meetings such as the October 17, 1985 meeting. Mr. Rule stated that the Attorney General had authority to make decisions, and could get involved in any specific decision if he chose to do so. However, Mr. Rule's experience with Mr. Meese, not only relating to telecommunications matters, but overall, was that for the most part he left antitrust matters up to the Antitrust Division. Mr. Meese confirmed in his grand jury testimony that this was his approach: He relied on "Mr. Ginsburg or members of the Antitrust Division . . . to set the policy and explain the policy. . . . I would usually pretty much leave it up to them."

Both Mr. Rule and Mr. Ginsburg stated that they could not recall any occasion where Mr. Meese gave them any specific direction on a specific matter. Mr. Rule stated that the Attorney General "never overruled the recommendations or the decisions of the people in the Division." On only two occasions did Mr. Ginsburg seek Attorney General Meese's approval of proposed Antitrust Division actions: first, relating to the telecommunications policy plan presented in the October 17, 1985 meeting; and second, relating to the

proposed Federal Telecommunications Policy Act of 1986,
discussed infra.

Mr. Rule also testified before the grand jury [

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Mr. Meese, during his testimony before the grand
jury about this meeting, also described his role at the
October 17, 1985 meeting.

Independent Counsel: Going back to Judge Ginsburg's memo
and his plan and policy approach, did you agree with

his general policy approach concerning the enforcement of the MFJ and moving towards relaxing the restrictions?

Mr. Meese: I think generally, yes. Obviously he was much more of an expert on the subject than I was, and I found nothing in there that was inconsistent with the President's policies, which would be what I was looking for.

Independent Counsel: Did you approve his plan for implementing the policy approach?

Mr. Meese: Well, I doubt if I formally approved it as such. I would say that having heard it I saw no reason not to go forward with it or I would have -- I'm sure that I concurred in what he had recommended.

Independent Counsel: If you had not concurred or had made any suggestions for changes or alterations, would it have gone forward with those changes?

Mr. Meese: Well, it would all depend. I might have raised questions about particular things. If I saw something in there that I appeared to be at odds, let's say, with the general Administration policy of deregulation or something like that, I might have raised questions about it and asked them why they were doing this rather than that, but as I recall, in this, the plan they had laid out was totally compatible with the President's approach, and so I don't remember making any changes or really much comment on it.

Mr. Meese expressly approved Mr. Ginsburg's approach at the October 17, 1985 meeting, which was held specifically to discuss the long-range policy plan and to brief Mr. Meese about it.

Mr. Ginsburg testified that [

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Mr. Meese's approval of this plan put in motion a Department of Justice course of action intended, as requested by the RBOCs, to relax the restrictions imposed by the MFJ on the RBOCs.

On the basis of the evidence discussed above, the independent counsel has concluded that Mr. Meese's approval of the Antitrust Division's plans for formulating the Department's January 1987 recommendations to the Court, constituted personal and substantial participation in a particular matter.

11. Fall 1985 Memoranda

On October 23, 1985, Mr. Meese received an Antitrust Division Biweekly Report that included a discussion of an October 17, 1985 Court filing relating to the Division's investigation into AT&T's implementation of customer primary interexchange carrier selections. This filing was discussed in the earlier October 11, 1985 information memorandum from Mr. Ginsburg to Mr. Meese.

On November 26, 1985, Mr. Meese received a Biweekly Report with a cover memorandum from Mr. Harrison summarizing the report. Among other items, the report contained, and Mr. Harrison summarized for Mr. Meese, a discussion of a recent filing by the Antitrust Division with Judge Greene. The filing proposed a process that would allow the RBOCs to

join in each other's waiver requests so that all the RBOCs would receive the benefits of any waiver granted to any one RBOC. This issue was discussed in Mr. Ginsburg's letter to Chairman Dingell and in Mr. Ginsburg's planned speech, both of which were mentioned in Mr. Ginsburg's October 17, 1985 memorandum to the Attorney General.

On December 13, 1985, the Bell Atlantic meeting, initially requested for late August, took place.^{171/} In accordance with usual practice, Mr. Ginsburg sent Mr. Meese an information memorandum on Bell Atlantic matters pending before the Antitrust Division. This memorandum updated and expanded on the information contained in the August memorandum.

12. Early 1986 Memoranda and Reports

A Biweekly Report dated January 24, 1986, sent to Mr. Meese described a January 13, 1986 decision by Judge Greene, which denied several motions filed by the RBOCs for clarification of the MFJ. Several of the RBOCs, including Ameritech, Pacific Telesis, and U.S. West, had proposed clarifications to the MFJ that would have permitted them to engage in prohibited telecommunications activities without first obtaining waivers of the decree's line-of-business restrictions. The Department of Justice had opposed the RBOC requests as inconsistent with the MFJ. Judge

^{171/} The Bell Atlantic meeting is discussed infra.

Greene's decision precluded the RBOCs from entering these new businesses. The Biweekly Report noted: "It may be significant that the reasoning and language of the court's opinion are strongly opposed to any expansion of RBOC business activities outside the waiver process."

On January 27, 1986, Mr. Ginsburg sent Mr. Meese a memorandum describing Judge Greene's January 13, 1986 decision. The memorandum contained, according to Mr. Rule, "a much more explicit expression" of the concerns of the Antitrust Division about Judge Greene's decision. Mr. Ginsburg's memorandum described the "court's clear hostility to the RBOCs' efforts to expand their nontelephone activities." The memorandum also stated: "The court's attitude on this point reflects a far more regulatory approach towards the decree than was intended by AT&T or the Department."

Mr. Ginsburg was concerned that Judge Greene's reasoning and language suggested that he was likely to be unwilling to consider any significant modifications of the MFJ. This concern related to the policy of the Department of Justice, as delineated in the October 17, 1985 meeting, of presenting recommendations to the Court that would seek to relax or remove the MFJ restrictions.

On February 7, 1986, Mr. Ginsburg sent Mr. Meese an information memorandum concerning the acquisition of

Communications Industries, Inc., by Pacific Telesis.^{172/} The cover sheet to this memorandum listed under "Comments": "I am bringing this small matter to your attention only because you could receive a call from Judge Clark or Bill Smith. That is not likely, but I didn't want you to be surprised." Judge William P. Clark and former Attorney General William French Smith were both on the Board of Directors of Pacific Telesis, and were long-time friends and former colleagues of Mr. Meese.

On February 11, 1986, Mr. Meese received a Biweekly Report that reported a filing by the Antitrust Division with the FCC relating to Computer Inquiry III.^{173/} In its filing, the Antitrust Division urged the FCC to develop rules that would allow the RBOCs to provide integrated services above and beyond "plain old telephone services" without forming a separate subsidiary.

On February 21, 1986, Mr. Meese received a memorandum from Mr. Ginsburg relating to NYNEX's proposal to acquire a 50 percent interest in a transatlantic cable venture. The memorandum portrayed NYNEX's proposal as a

^{172/} Issues concerning this acquisition are discussed infra.

^{173/} Computer Inquiry III was a regulatory inquiry by the FCC that explored whether and under what conditions RBOC subsidiaries could provide services other than basic local telephone services. The focus was on whether the subsidiaries had to be fully separate corporate entities or whether some integration would be permitted between basic local telephone services (provided by the RBOCs) and other services (provided by the subsidiaries).

fairly important matter before the Antitrust Division; the request went "to the heart of the agreement made with AT&T in 1982." NYNEX asked to provide long distance transatlantic services, an activity prohibited under the terms of the consent decree. The request went directly against assumptions underlying the consent decree, and NYNEX had not supplied the Antitrust Division with specific information supporting its request. Mr. Ginsburg therefore informed Mr. Meese that the Department was likely to oppose a waiver to NYNEX with respect to this proposed venture.

A Biweekly Report dated March 13, 1986, covered the final disposition of Pacific Telesis' proposed acquisition of Communications Industries, Inc. The questions relating to the acquisition were finally resolved with a consent decree filed on February 28, 1986. The consent decree conditionally permitted the acquisition.

13. Federal Telecommunications Policy Act of 1986

a. Mr. Meese's Approval of Proposed Legislation

Throughout the spring of 1986, the Antitrust Division developed draft legislation that would shift to the FCC the responsibilities of the Antitrust Division and of the Court under the MFJ. Early in 1986, Mr. Ginsburg had approved the idea of the legislation, and the Division had begun drafting a proposed bill. As the responsibilities of the Department of Justice and the Court were fairly complex, the

legislation was also complex, and the draft version took some time to prepare.

When the legislation was ready to be introduced in May 1986, Mr. Ginsburg had a meeting with Mr. Meese to obtain his approval. Mr. Ginsburg testified that [

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Mr. Meese testified that, as a general practice, he was briefed about legislative proposals with the purpose of obtaining his "concurrence," before they went outside the Department of Justice. As to this legislative proposal, Mr. Meese testified: "my best recollection is that [I] was agreeable to the legislation going forward, and I don't believe that I had any comment on it at all. The idea seemed sound to me." According to Mr. Ginsburg, Mr. Meese "readily" approved the proposed legislation.

On the basis of the evidence discussed above, the independent counsel concluded that Mr. Meese's approval of the Antitrust Division's efforts with respect to the proposed legislation, subsequently introduced by Senator Robert J. Dole as the Federal Telecommunications Policy Act of 1986, constituted personal and substantial participation in a particular matter.

**b. Proposed Telephone Call From
Mr. Meese to Senator Dole**

Officials in the Antitrust Division believed that the Department of Justice should not be the lead agency on the legislation, and that the FCC was better suited to that role, because regulatory authority would be transferred to it under the legislation. The Antitrust Division contacted Senator Dole, the Senate Majority Leader, through his staff, to ask whether he would be willing to introduce the legislation. When Mr. Ginsburg briefed Mr. Meese about the legislation, there had already been staff discussions between Antitrust Division personnel and Senator Dole's staff members.

On June 9, 1986, Mr. Ginsburg sent a note to Mr. Cribb, attaching talking points "that I promised you this morning." The talking points were prepared for a planned telephone call from Mr. Meese to Senator Dole to overcome the Senator's remaining reservations about the legislation. The talking points confirmed that the Departments of Justice, Commerce, and Defense supported the proposed legislation, and discussed Senator Dole's constituency concerns. Neither Mr. Meese nor Mr. Ginsburg was certain whether or not Mr. Meese did in fact call Senator Dole. Senator Dole did not recall such a conversaton with Mr. Meese, and stated that, as he rarely talked with Mr. Meese, he would have remembered the conversation had it occurred. There is no record in the telephone logs kept by Senator Dole's staff of a telephone

call between Senator Dole and Mr. Meese in early or mid-June 1986.

Nine days after the talking-points memorandum was given to Mr. Meese through Mr. Cribb, Senator Dole introduced the Federal Telecommunications Policy Act of 1986. On the same day, Mr. Ginsburg issued a press statement praising the introduction of the legislation and stating that it was endorsed by the Antitrust Division and the Administration.

As detailed in the discussion above, from February 1985 through the summer of 1986, Mr. Meese received about two dozen memoranda concerning telecommunications matters and specific telecommunications issues before the Antitrust Division. Mr. Meese received the memoranda either in a reading file or in a schedule notebook. The reading file was compiled each day for him to take home in the evening. His aides arranged the information in order of priority.

How much Mr. Meese read of the reading file depended on how busy he was. According to Stephen H. Galebach, the Senior Special Assistant, whose responsibilities through January 1986 included creating the reading file, Mr. Meese frequently asked for more material for the reading file. His aides believed that Mr. Meese read some of the information in the reading file in its entirety, skimmed some of it, and at times did not read it at all.

A daily notebook, created for Mr. Meese on events scheduled for the following day, contained background and

briefing information for specific meetings. For example, the Antitrust Division memoranda concerning Mr. Meese's meetings, such as the meetings with Pacific Telesis on July 9, 1985, and with Bell Atlantic on December 13, 1985, were included in the schedule notebook.

Through these meetings, information memoranda, and Biweekly Reports, as well as discussions with and information from his special assistants, Mr. Meese was kept thoroughly informed of major telecommunications matters under consideration by the Antitrust Division.

Mr. Meese did not normally participate directly in Antitrust Division matters, but merely received information from the Division. There were some exceptions, however, notably the October 17, 1985 long-range planning meeting concerning the enforcement and ultimate posture of the Department of Justice with respect to the MFJ, as well as development of the proposed Federal Telecommunications Policy Act of 1986. Assistant Attorney General Ginsburg explicitly sought and received the Attorney General's approval for these matters. Except for these two matters, however, the independent counsel obtained no evidence that Mr. Meese made any specific recommendations, requested any policy changes or gave any directions concerning any specific decision made by the Antitrust Division.

**B. Telecommunications Correspondence
Between the Department of Justice and
Other Federal Agencies**

As early as the spring and summer of 1985, other governmental agencies, notably the Department of Defense, the FCC, and the Department of Commerce, were looking toward the planned formulation of recommendations to be presented to the Court in the Department of Justice report scheduled for January 1987.

**1. Department of Commerce
Correspondence**

The Department of Commerce was particularly interested in potential changes in the consent decree. Secretary Baldridge was concerned in early 1985 that the policy of the Department of Justice would not be as favorable to the RBOCs as the Department of Commerce would prefer. The National Telecommunications and Information Administration (NTIA) of the Department of Commerce conducted a study in 1985 of the telecommunications industry. Secretary Baldridge wrote Attorney General Meese on July 23, 1985, enclosing this study and urging that the Department of Justice take into consideration the Department of Commerce's views in its approach to the administration of the consent decree.

Mr. Harrison met with representatives of NTIA concerning their study in the summer of 1985. Mr. Harrison reported that the Department of Commerce representatives expressed concern that the MFJ overly restricted the RBOCs.

They urged that the restrictions be removed or relaxed. The Department of Commerce also conveyed to the Department of Justice other specific proposals during 1985 and 1986 concerning the Department of Commerce's potential role in regulating the telecommunications industry.

When Secretary Baldrige sent correspondence to the Attorney General, such as the July 23, 1985 letter enclosing the completed study, a responsive letter was prepared for Mr. Meese's signature. In the case of the July 23, 1985 letter, a July 30, 1985 response was prepared within the Office of the Attorney General which was signed "Ed" by Mr. Meese. The letter, addressed to "Dear Mac," stated that Mr. Meese expected "to give close attention to telecommunications issues soon after Doug Ginsberg [sic] comes on board as head of the Antitrust Division. Let's get together to discuss the report and related questions then."

a. August 20, 1985 Letter to
Mr. Meese from Secretary Baldrige

The correspondence continued with an August 20, 1985 letter from Secretary Baldrige to Mr. Meese. In that letter, Secretary Baldrige stated that he was pleased to have received Mr. Meese's response to his earlier letter and to have received an invitation to talk about the Department of Commerce's recommendations. Secretary Baldrige's letter enumerated specific concerns of the Department of Commerce. The letter's focus was the MFJ restriction preventing the

RBOCs from competing in overseas communications markets. Secretary Baldrige wrote specifically about Ameritech's application for a waiver of the equipment manufacturing restriction. The letter, as did the NTIA study, recommended adoption of a "blanket waiver" policy toward proposals by the RBOCs to compete in overseas markets. Secretary Baldrige closed his letter by urging that the Department of Justice review all the restrictions placed on the RBOCs because the restrictions hampered efficient use of the extensive resources of the RBOCs.

Mr. Meese testified that correspondence from Secretary Baldrige would receive "careful attention." Substantive correspondence such as Secretary Baldrige's August 20, 1985 letter was referred to the Antitrust Division for preparation of a response for Mr. Meese's signature. The Antitrust Division prepared a response to Secretary Baldrige which was signed by Mr. Meese and sent on September 24, 1985. In that letter, Mr. Meese discussed the specific points in Secretary Baldrige's letter. First, concerning the "blanket waiver" policy recommended by Secretary Baldrige, Mr. Meese noted that out of 51 waiver requests received by the Department of Justice since January 1, 1984, the Department recommended that the Court approve, and the Court did approve, 40, including nine that permitted overseas activities. Second, as to the Ameritech waiver request, Mr. Meese wrote that he had been "advised by Assistant Attorney General

Ginsburg of the Antitrust Division, that it [had] already discussed this waiver request with Ameritech and [was] considering whether it [could] recommend approval of the waiver request to the Court."

b. **March 14, 1986 Letter to
Mr. Meese from Secretary Baldrige**

On March 14, 1986, Secretary Baldrige sent a letter to Mr. Meese concerning the January 1987 report to be submitted by the Department of Justice to the Court. Secretary Baldrige's letter stated that the 1987 review of the 1982 decree would involve communications policy, trade, and technology development issues as well as antitrust concerns. For that reason, Secretary Baldrige suggested that the Department of Commerce be involved in the preparation of the January 1987 report by the Department of Justice. Secretary Baldrige anticipated working with the Department of Justice to develop background materials necessary for the Cabinet to make an informed decision.

Secretary Baldrige's letter was referred to the Antitrust Division for preparation of a response. On March 27, 1986, Mr. Ginsburg sent Mr. Meese a response which was signed by Mr. Meese and sent on April 16, 1986. The letter stated Mr. Meese's appreciation of the "offer of Commerce Department resources to help in [the Department of Justice's] study." It also informed Secretary Baldrige of the Antitrust Division's plan that the study would be

conducted by an expert consultant, Mr. Huber, who had been retained by the Department of Justice. The letter explained that Mr. Huber's research would encompass numerous sources of information including NTIA, and mentioned that Mr. Huber had already spoken with members of NTIA about his study. The final paragraph of the letter stated that Mr. Meese looked forward to working with Secretary Baldrige on these issues.

According to Mr. Ginsburg, the Department of Commerce's suggestion that it be closely involved in the preparation of the 1987 recommendations was not favorably received. Mr. Ginsburg preferred that the Department of Commerce present its views directly to the Court. The Department of Justice's recommendations were to be presented as recommendations of the Department's lawyers, who were actually engaged in enforcing the MFJ. Mr. Ginsburg did not want the Department of Justice position to be combined with the opinions or approaches of other Departments. The April 16, 1986 letter from Mr. Meese to Secretary Baldrige was designed to limit participation by the Department of Commerce in the formulation of the recommendations by emphasizing that the study was being conducted by Mr. Huber. Mr. Ginsburg stated that he did not think it appropriate for the Department of Commerce to participate directly in the Antitrust Division's internal process of formulating the recommendations.

When the Antitrust Division had developed draft recommendations in November 1986, Department of Commerce officials were anxious to meet with Department of Justice staff to consult on the recommendations. Spurred by the arrival of the draft recommendations for the Attorney General's approval, Mr. Meese's staff decided to apply for a waiver for him under 18 U.S.C. § 208(b) that would permit Mr. Meese to participate in telecommunications matters. The meetings proposed by Department of Commerce officials concerning the recommendations were put off through November, December, and most of January, while the application for a Section 208(b) waiver was considered and prepared by the Office of the Counsel to the President.

Mr. Meese did not meet with Department of Commerce officials concerning the January report until January 1987, after he had received the waiver. However, he discussed the matter with Secretary Baldrige prior to that time. On November 24, 1986, Secretary Baldrige telephoned Mr. Meese to discuss the forthcoming January 1987 recommendations. On the morning of November 25, 1986, Mr. Rule sent the draft recommendations to Mr. Meese. On the afternoon of November 25, 1986, Secretary Baldrige telephoned again. A note from Mr. Rule to Mr. Richardson asked that Mr. Meese speak with Mr. Rule about the draft recommendations before Mr. Meese returned Secretary Baldrige's call. Later in the afternoon, Mr. Meese returned Secretary Baldrige's call. Thus, although Mr. Meese

did not act on the draft recommendations, the evidence shows that he did communicate with Secretary Baldrige about the matter.

In December of 1986, the Department of Commerce prepared a "talking paper" to Mr. Meese reflecting Commerce's concerns with the draft recommendations. Mr. Cribb forwarded the talking paper to Mr. Rule for response apparently in accordance with his policy at that time of withholding telecommunications matters from Mr. Meese pending resolution of the waiver application.

Mr. Meese received a waiver allowing his participation in telecommunications matters on January 20, 1987. On the same day, Mr. Meese discussed the proposed recommendations with Acting Assistant Attorney General Rule.^{174/} Mr. Meese told Mr. Rule that he did not want to act on the recommendations until he had spoken with Secretary Baldrige, because he knew of Secretary Baldrige's deep concerns. As a result, Mr. Meese met with Secretary Baldrige and other officials of the Department of Commerce on January 27, 1987.

According to Mr. Rule, at that meeting he persuaded Secretary Baldrige that the recommendations proposed by the

^{174/} In November 1986, Mr. Ginsburg left the Antitrust Division to become a Judge on the United States Court of Appeals for the District of Columbia Circuit.

Department of Justice were generally consistent with the Department of Commerce's position. The Department of Justice was recommending a more complete relaxation of the restrictions than was the Department of Commerce, a reversal of their roles since the discussions in the summer of 1985. Mr. Rule stated that he convinced Secretary Baldrige that the recommendations were reasonable. After the meeting, and after ensuring that Secretary Baldrige's concerns had been considered, Mr. Meese quickly approved, without change, the draft recommendations.

2. Interest of Other Agencies

Mr. Meese's notes from his June 10, 1985 meeting with Mr. Henson of United Telecommunications, Inc. reflected that Mr. Meese was to discuss with Mark S. Fowler, the Chairman of the FCC, issues raised at the meeting with Mr. Henson. Mr. Meese did not specifically recall such a discussion with Mr. Fowler. He was sure, however, that he discussed telecommunications policy issues with Mr. Fowler "from time to time."

Mr. Rule informed the office of independent counsel that a number of agencies were interested in the forthcoming January 1987 report to the Court, including the Council of Economic Advisers, the Department of Defense, the Department of the Treasury, and the United States Trade Representative's Office, as well as the Department of Commerce and the FCC. The office of independent counsel is not aware of significant

contacts between Mr. Meese and those agencies other than as described above.

3. Correspondence with
Members of Congress

Mr. Meese received occasional correspondence from members of Congress concerning telecommunications matters. That correspondence, which reflected constituency concerns, opinions and recommendations concerning the MFJ, enforcement of the MFJ, and the restrictions on the RBOCs, was usually referred to the Antitrust Division or the Office of Liaison Services.

An example of this kind of correspondence was a January 22, 1986 letter to Mr. Meese from Congressman Guy Vander Jagt, requesting as a personal favor that Mr. Meese meet with the CEO and the Vice President of Ameritech.

Mr. Meese also had several telephone conversations with Congressmen and received a letter dated March 14, 1986, reflecting Congressman Vander Jagt's concerns about the MFJ restrictions. Congressman Vander Jagt's letter reflected his support for legislation that would modify the MFJ, while stating his preference that the Department of Justice "deal with this matter so as to avoid the need for a radical legislative solution." This letter was referred to the Antitrust Division, and a response dated April 23, 1986, was

signed by John R. Bolton, Assistant Attorney General for Legislative Affairs.^{175/}

C. Contact With the RBOCs and
Other Telecommunications Companies

Correspondence between telecommunications companies and Mr. Meese began before any action was taken by Mr. Meese to divest his financial interest in AT&T and the RBOCs. Before Mr. Meese was confirmed as Attorney General, Arthur C. Latno, Jr., Executive Vice President of Pacific Telesis, wrote him a letter informing him of the company's dissatisfaction with the waiver process and the MFJ restrictions, and suggesting what Pacific Telesis viewed as "appropriate actions" to resolve those problems. Mr. Latno's letter recommended cooperation between the RBOCs and the Department of Justice, and was thus addressed to Mr. Meese in his capacity as Attorney General-designate. Mr. Latno, according

^{175/} Senator Paul Laxalt sent Mr. Meese a letter dated September 25, 1985, expressing his concern about the effects of the MFJ restrictions on telephone service. Senator Laxalt's letter was referred to the Office of Liaison Services, and a response signed by Mr. Bolton was sent on February 2, 1986.

Mr. Meese was sent copies of the following letters concerning the MFJ: a letter from Congressman Hamilton Fish, Jr. to Mr. Ginsburg dated March 27, 1986; a June 3, 1986 letter from Senator John C. Danforth to Mr. Ginsburg; a letter from Congressman Trent Lott dated October 23, 1986 to Alfred C. Sikes, Assistant Secretary for Communications and Information Policy at the Department of Commerce; and a December 23, 1986 letter also from Congressman Lott to James A. Baker III, Secretary of the Treasury.

to Mr. Meese, "was an old friend of mine from California days."

On February 26, 1985, Mr. Meese received a call from the office of Charles L. Brown, Chairman of AT&T, requesting "about 30 minutes w/Mr. Meese." The two did not meet on the day requested by Mr. Brown; however, Mr. Meese's schedule for March 27, 1985, reflected a meeting with Mr. Brown on that date. It is not clear whether this meeting took place as planned. If it occurred on March 27, 1985, it would have been before Mr. Meese sold his stock in AT&T.^{176/}

1. Pacific Telesis

a. July 9, 1985 Meeting

In the early summer of 1985, a meeting was scheduled for July 9, 1985, between representatives of Pacific Telesis and Mr. Meese. On July 3, Mr. Latno sent Mr. Meese a letter thanking him for scheduling the July 9, 1985 meeting, and enclosing a memorandum of subjects for discussion. They were: (1) the waiver process under the AT&T consent decree; (2) the information services restriction on the RBOCs under the

^{176/} Prior to this time, Mr. Meese remembered meeting with Mr. Brown "on probably more than two occasions over the course of time" when Mr. Meese was Counselor to the President.

Mr. Meese recalled meeting with Mr. Brown in June 1986 where Mr. Brown introduced him to James Olson, who succeeded Mr. Brown as AT&T's chairman.

decree; and (3) the proposed acquisition by Pacific Telesis of Communications Industries, Inc. (CI).

Mr. Harrison's notes of the meeting reflected that Mr. Latno's presentation began with Pacific Telesis' concern that its proposed acquisition of CI be approved. Mr. Latno spoke favorably of the Antitrust Division's handling of the waiver process under the AT&T decree. However, he complained that waivers were time-consuming and expensive; that the waiver process had the anticompetitive effect of making the business plans of the RBOCs public; and that the Department of Justice's role was quasi-regulatory.

Mr. Latno pointed out that the administration of the decree had not benefited from high level policy guidance since its original institution in 1984, because Attorney General Smith and Assistant Attorney General McGrath had been recused from participation in AT&T matters.

Mr. Latno objected to the restrictions placed on the RBOCs by the decree, particularly their preclusion from participation in information services. Mr. Latno stated that the RBOCs should be able to enter virtually any line of business if they met the four criteria established by the MFJ. Mr. Latno suggested that the timing of the Department of Justice's report to the Court, then set for January 1987, could be accelerated. He posited that the prohibition on manufacturing customer premises equipment was illogical.

Mr. Harrison's notes from and recollection of the meeting reflected that Mr. Meese responded to Mr. Latno's concerns by saying that he hoped to have an Assistant Attorney General for Antitrust confirmed soon, after which there would be no more recusal problems. He also was sympathetic with Mr. Latno's presentation; he stated that the outcome of the consent decree wasn't "exactly what the judge had in mind," and was not really what antitrust litigation was designed to accomplish. The notes did not reflect, and no one present at the meeting could recollect, any detailed discussion between Mr. Meese and the Pacific Telesis representatives of the merits of the MFJ restrictions or the proposed acquisition of CI.

b. Mr. Meese's Correspondence
With Judge Clark

Judge William P. Clark, who had a long standing personal and professional relationship with Mr. Meese, was appointed a Director of the Board of Pacific Telesis on May 24, 1985. On October 1, 1985, Judge Clark sent Mr. Meese a letter. Neither Judge Clark nor Mr. Latno specifically recalled how this letter originated. Judge Clark stated that the letter actually was written by other lawyers at his law firm, Rogers & Wells. He was not sure whether he signed it or his secretary signed it for him. However, he adopted the letter. Judge Clark indicated that he probably sent the

letter because it would be more likely to get Mr. Meese's attention in view of their past relationship.

In his letter, Judge Clark reiterated the concerns expressed by Mr. Latno in the July 9, 1985 meeting, although with a slightly different emphasis; he criticized the Antitrust Division's burdensome enforcement policy relating to the MFJ restrictions, and suggested that Mr. Meese take advantage of the opportunity for sweeping review of the MFJ that the upcoming recommendations to the Court would provide. Judge Clark also requested that the proposed Pacific Telesis acquisition of CI be reviewed promptly.

The letter was received on October 2, 1985; on October 4, 1985, Judge Clark called Mr. Meese to speak with him about several matters, including the Department of Justice's telecommunications policy. An entry in Mr. Meese's spiral notebook^{177/} for October 4, 1985, reflected the call from Judge Clark with the notation: "Telephone situation, ref: AT&T case." Judge Clark did not recall this discussion with Mr. Meese, nor did he recall any discussion with Mr. Meese about the AT&T case, the proposed Pacific Telesis acquisition of CI, or telecommunications policy generally, although he believed that such conversations may have taken place. Mr. Meese did not have any specific recollection of

^{177/} Mr. Meese routinely recorded the subject matters of telephone calls and meetings in spiral notebooks.

his telephone conversations with Judge Clark about telecommunications or Pacific Telesis matters.

Mr. Latno stated that, as time passed without a Department of Justice ruling on the proposed CI acquisition, Pacific Telesis became more and more concerned about the upcoming "drop-dead" date. The acquisition agreement signed by Pacific Telesis with CI was binding only for a certain period. If the transaction was not approved during that period, the deal was likely to fall through. Therefore, according to Mr. Latno, Pacific Telesis began to do everything it could in order to hasten the Antitrust Division's review of the acquisition.

Judge Clark telephoned Mr. Meese in November 1985 to seek a quick review of the proposed acquisition. This conversation was noted in Mr. Meese's spiral notebook for November 12, 1985. In that conversation, which lasted about eight minutes, Mr. Meese and Judge Clark discussed three items. The second item related to Pacific Telesis, which according to Mr. Meese's handwritten notes "would appreciate prompt ruling (either aff or neg)." Neither Judge Clark nor Mr. Meese recollected this conversation, although both believed that it probably occurred. Judge Clark did not recall discussing anything about the proposed acquisition.

Mr. Meese did not recall what he may or may not have done in response to the concerns raised by Judge Clark in the telephone conversation. He testified that he may have had one

of his staff pass on to the Antitrust Division the fact that Pacific Telesis would appreciate a prompt ruling.

Neither Mr. Rule nor Mr. Ginsburg recalled being asked by anyone in the Office of Attorney General about the Pacific Telesis acquisition. Both Mr. Rule and Mr. Ginsburg stated that they did not receive any affirmative direction from Mr. Meese either to speed up their review or to rule in favor of Pacific Telesis.

On February 7, 1986, as discussed above, Mr. Ginsburg informed Mr. Meese by memorandum of the Antitrust Division's challenge to a minor aspect of the proposed Pacific Telesis acquisition. A cover memorandum noted that the information was being provided to Mr. Meese because it was possible that he would be contacted by Judge Clark (or former Attorney General Smith) concerning the proposed acquisition. Mr. Ginsburg stated that the note was added because he knew that Mr. Meese and Judge Clark often spoke to each other. Mr. Ginsburg was not aware specifically of any discussion between the two on this particular issue. The issues involved in the Pacific Telesis-CI acquisition were settled on February 28, 1986, by the filing of a consent decree, conditionally permitting the acquisition, with the United States District Court in Los Angeles.

On March 31, 1986, Judge Clark sent Mr. Meese another letter, much shorter than the first, concerning the planned January 1987 report to the Court. The letter opened

with: "As we have discussed before," and reminded Mr. Meese of previous conversations on telecommunications matters. The letter stated the desire of Pacific Telesis that responsibility for the regulatory process relating to the RBOCs be shifted from "the Judiciary to the Executive Branch." Judge Clark's letter closed: "Should you desire further comment or contribution from the private sector to assist the ultimate determination, please let me know."

The Antitrust Division prepared a draft response to this letter. With the addition of a closing "with kindest regards, Ed," the response was signed and sent on June 21, 1986, by Mr. Meese.

2. Bell Atlantic

According to Thomas E. Bolger, CEO and Chairman of the Board of Bell Atlantic, Bell Atlantic requested a meeting with the Attorney General in the spring or summer of 1985. He thought the request was by telephone; no written correspondence for that period was found either in Bell Atlantic files or those of the Attorney General. The meeting was initially scheduled for late August 1985; Mr. Meese received an information memorandum from the Antitrust Division briefing him on Bell Atlantic matters for the meeting in early August. However, the meeting was rescheduled for December of 1985.

Later in the fall, Mr. Bolger wrote Mr. Meese a letter expressing Bell Atlantic's concerns about the MFJ

restrictions. The thrust of Mr. Bolger's November 12, 1985 letter was a call for acceleration of the Court review, scheduled for January 1987, of the restrictions on the RBOCs. The letter continued with the suggestion that the planned review include a reappraisal of the restrictions. Mr. Bolger also suggested that the Department of Justice reconsider "its basic outlook on the administration of the decree."

Mr. Bolger concluded:

What is needed, therefore, is a clear statement of Department policy that emphasizes that the purpose of the Decree is to promote the maximum competition in the telecommunications industry and that the Decree will be administered to achieve that objective. In addition, an immediate start should be made on the reevaluation of the Decree restrictions that has been required by the Court so that the Department's report now scheduled for 1987 can be available at the earliest possible date.

Mr. Bolger's letter was referred to the Antitrust Division for preparation of a response. No written response was ultimately necessary, because Mr. Meese met with Mr. Bolger and other representatives of Bell Atlantic on December 13, 1985. The issues raised by Mr. Bolger in the letter were discussed at the meeting.

The information memorandum Mr. Ginsburg provided Mr. Meese for the Bell Atlantic meeting discussed the issues pertaining to all of the RBOCs. Mr. Ginsburg explained that "the matters pending before the Department that affect Bell

Atlantic are substantially identical to the pending matters affecting all RBOCs."

The meeting with Bell Atlantic representatives was attended by Mr. Meese, Mr. Harrison, Mr. Bolger, Robert A. Levetown (the General Counsel of Bell Atlantic), and Messrs. Ginsburg and Rule of the Antitrust Division. At the meeting, Mr. Bolger presented Bell Atlantic's view of the MFJ. As in his November 1985 letter to Mr. Meese, Mr. Bolger's emphasis was on the timing of relief. He argued that the scheduled review was not soon enough. He explained that Bell Atlantic was losing competitive opportunities, particularly in relation to large customers. Large customers preferred a single vendor of telecommunications services. Under the terms of the MFJ, the RBOCs could not act as a single vendor of integrated services to large customers.

Mr. Ginsburg stated that the Bell Atlantic meeting was unusual in that it was productive. According to both Mr. Ginsburg and Mr. Rule, a "new idea with real promise" came up spontaneously at the Bell Atlantic meeting. Either Mr. Bolger or Mr. Levetown suggested that the RBOCs be permitted to act as general contractors for deals that included services the RBOCs were not permitted to provide, subcontracting out the provision of those services. Bell Atlantic did not pursue the idea after the meeting, and nothing came of it. However, the fact that a new idea arose and prompted interested, substantive exchange among the meeting's participants suggests that

the Bell Atlantic meeting cannot be dismissed as a simple "courtesy" call.

Mr. Meese's role at the Bell Atlantic meeting was similar to his role at other meetings with the RBOCs. By and large he listened to the presentation given by Mr. Bolger, asked occasional questions, made sympathetic comments, but did not delve deeply into the substance of the issues raised at the meeting.

Mr. Meese later received a letter dated April 2, 1986, from Philip A. Campbell, the President of Bell Atlantic. This letter was in response to another letter written to Mr. Meese by William G. McGowan of MCI. As was usual, Mr. Campbell's letter was referred to the Antitrust Division for preparation of a reply. Substantially identical responses to Mr. McGowan and Mr. Campbell were prepared, signed by Mr. Meese and sent on May 1, 1986. The responses were brief and nonsubstantive.

3. BellSouth

On August 22, 1985, the Chairman of the Board of BellSouth, J.E. Clendenin, wrote to Mr. Meese requesting a personal meeting in order to share with Mr. Meese "some of my perspective regarding the revolutionary change that has occurred and will evolve in the future. My goal is to provide constructive assistance in your efforts to shape public policy affecting telecommunications in the late 1980s and 1990s."

The meeting with BellSouth did not occur until January 28, 1986. The meeting was attended by Mr. Meese, Mr. Clendenin, Norman C. Frost (General Counsel of BellSouth) Mr. Ginsburg, Mr. Rule and Steven G. Calabresi. Mr. Calabresi had taken over the role of Mr. Meese's Special Assistant for antitrust matters.

Before the scheduled time of the January 28, 1986 meeting, news of the explosion of the Challenger space shuttle was received. The meeting was delayed thirty or forty minutes, as Mr. Meese listened to the news of the Challenger explosion, and focused on related issues. The meeting then took place and lasted from thirty to forty minutes, as scheduled. Mr. Frost and Mr. Calabresi noted that Mr. Meese and other participants at the meeting were somewhat preoccupied with the news.

Mr. Frost stated that, at the meeting on January 28, 1986, he and Mr. Clendenin were "hoping we'd get pretty much what we did get -- a reasonable hearing as to our problems before the Department of Justice as to the consent decree."

One of BellSouth's concerns was ensuring that the company's views would be heard as the Antitrust Division prepared the January 1987 report to the Court. Mr. Frost stated that, at the end of the meeting, Mr. Meese assured BellSouth officials that they would be given an opportunity to be heard by the Antitrust Division. Mr. Frost said that he and Mr. Clendenin were satisfied that they had presented their

position to Mr. Meese and, in the presence of both Mr. Ginsburg and Mr. Rule, received Mr. Meese's assurance that BellSouth's views would be taken into account in the formulation of the January 1987 report.

4. Ameritech

On April 10, 1985, a note was sent from Mr. Cribb's secretary to Marilee A. Melvin, Mr. Meese's confidential assistant, requesting that arrangements be made for Mr. Meese, Mr. Cribb and Mr. Rule to meet with Chairman Fowler of the FCC, William L. Weiss, the Chairman and CEO of Ameritech, and John Connarn, Vice President of Ameritech, at sometime "in the near future." The note continued:

Ameritech is one of the seven Bell operating companies in the U.S. and is greatly concerned about what the Justice Department is doing in the area of telecommunications. Ken advised that this should be raised as a priority item with the AG and before he left our staff, Hugh Hewitt advised that there is nothing which would preclude the AG's meeting with these individuals.

Mr. Hewitt was the Special Assistant in the Office of the Attorney General responsible for ethics matters. Mr. Cribb does not recall consideration of the question of Mr. Meese meeting with representatives of the RBOCs before he divested his RBOC stocks. The proposed meeting did not take place.

On July 24, 1985, the Attorney General received a letter from Jack McDonald of Jack McDonald Co., Consultants in

Government Affairs, requesting that Mr. Meese meet on August 7, 1985, with Mr. Weiss of Ameritech and Delbert C. Staley, the Chairman of the Board and CEO of NYNEX. The Attorney General was not available. On September 6, 1985, Mr. McDonald sent another letter requesting a meeting on October 10, 1985. However, no meeting took place until February 1986, when Mr. Meese met with representatives of Ameritech.

On January 16, 1986, a letter was sent from Mr. Connarn again requesting a meeting with Mr. Meese. That letter was followed by a January 22, 1986 letter from Congressman Vander Jagt, who wrote, "I would consider it a very personal favor if you could possibly squeeze them into your schedule for a brief meeting." The meeting occurred on February 4, 1986, when Mr. Meese met with Mr. Weiss and with Mr. Connarn. Mr. Ginsburg, Mr. Rule, and Mr. Calabresi also attended this meeting. A note on the memorandum for Mr. Meese attached to his schedule stated that the meeting request was supported by Mr. McDonald and Congressman Vander Jagt.

Mr. Calabresi's notes of the meeting indicated that Mr. Weiss gave a presentation similar to those Mr. Meese had already heard from Messrs. Latno and Bolger of Pacific Telesis and Bell Atlantic. Mr. Weiss stated that the RBOCs were at an impasse with the Court, and were inhibited by the terms of the consent decree while technologies and circumstances had changed. He stated that the MFJ was based on outdated

information and its current effects were anticompetitive. He also stated that Congress was uneasy with the MFJ.

Mr. Weiss informed the office of independent counsel that he wanted to encourage the Department of Justice to conduct an overall review of the MFJ. He knew that the issues confronting Ameritech were not going to be resolved immediately; he simply wanted to make his position known to the Attorney General.

Mr. Calabresi's notes reflected that Mr. Meese was "basically sympathetic" to Mr. Weiss's presentation. The Attorney General stated that the United States has the best communications system in the world and that courts were bad at running things as a general rule. The notes also reflected some discussion and comments by Mr. Ginsburg.

Mr. Meese received a letter from Mr. Weiss in December 1985. Mr. Weiss's letter stated in fairly strong terms Ameritech's view that the restrictions on the RBOCs should be lifted: "it is essential to lift immediately the inequitable restrictions imposed by the outdated Modification of Final Judgment." Mr. Weiss emphasized the competitive advantages of allowing the RBOCs to compete in the markets restricted under the MFJ. "The MFJ restrictions have outlived their usefulness and quickly should become relics of our past. . . . It is incomprehensible that the restrictions should continue."

5. NYNEX

As noted above, meeting requests on behalf of Mr. Staley of NYNEX were made in conjunction with the meeting requests on behalf of Mr. Weiss of Ameritech. Because the late August and October meetings requested in Mr. McDonald's letters did not take place, NYNEX did not meet with Mr. Meese. On March 25, 1986, Mr. Staley sent Mr. Meese a letter requesting another meeting: "I would appreciate the opportunity to discuss this matter and other MFJ-related topics with you in person at your earliest convenience." NYNEX also corresponded, as did all of the RBOCs, with some frequency with the Antitrust Division. Despite the requests by NYNEX, a meeting was not scheduled with Mr. Meese.

6. Southwestern Bell

Southwestern Bell did not request a meeting with Mr. Meese prior to September 18, 1986. Mr. Meese was sent a copy of an August 30, 1985 letter from Z.E. Barnes, the Chairman of the Board and CEO of Southwestern Bell, to Judge Greene. That letter responded to a concern about the quality and cost of basic telephone service expressed by Judge Greene at an August 9, 1985 hearing on interpretation of the MFJ.

There was no other correspondence between Southwestern Bell and until Mr. Rule, then Deputy Assistant Attorney General for Antitrust, received a request on September 18, 1986, from Liam L. Coonan, Vice President of Southwestern Bell, for a meeting between Mr. Barnes and

Mr. Meese. Mr. Rule informed Mr. Richardson of the request and stated that a meeting with Mr. Barnes would be appropriate.

7. U.S. West

In October 1986, an Assistant Vice President at U.S. West requested a meeting with Mr. Meese on October 23, 1986. Because Mr. Meese was in Germany, Mr. Cribb was asked to meet with the U.S. West representatives. In response to this request, Deborah Hansen, Mr. Cribb's secretary, sent a message to Mr. Rule: "Ken would like for you to meet with these gentlemen from U.S. West. He does not feel that either he or the AG should conduct the meeting." Mr. Rule met with the U.S. West officials on October 23, 1986. No one from the Office of the Attorney General was present.

At some point in the fall of 1986, Mr. Richardson and Mr. Cribb, who were aware that Mr. Meese had not found the missing stock certificates relating to the RBOCs, and had not yet received replacement certificates, became concerned about his participation in telecommunications matters. Neither specifically recollected when the matter arose. However, when the draft recommendations to the Court relating to the January 1987 triennial review of the MFJ were sent to Mr. Meese on November 25, 1986, Mr. Cribb had decided that the Attorney General's participation raised potential questions of appearance of conflict of interest. The September meeting request from Southwestern Bell, followed by the October

request from U.S. West, may have partially triggered Mr. Cribb's concern.

**8. Meetings and Correspondence
With RBOC Competitors**

On June 10, 1985, Mr. Meese met with Paul H. Henson, Chairman of the Board and CEO of United Telecommunications, the largest non-RBOC local operating company in the United States. In accordance with usual practice, Mr. Rule sent an information memorandum to Mr. Meese on Antitrust Division matters relating to United Telecommunications. Mr. Meese's handwritten notes from the meeting reflected that Mr. Henson spoke about long-term policy relating to the telecommunications industry. Mr. Meese's notes included the following: "EM to disc. w/Mark Fowler, DOJ (ATD) position already consistent w/this view." Mr. Harrison, who was present at this meeting with Mr. Henson, noted that he believed Mr. Henson knew the husband of one of Mr. Meese's Special Assistants, and that may have been one reason why the meeting was held. He does not remember the meeting to have been particularly long.

Mr. Meese's participation in this early meeting was consistent with his actions at later meetings; he listened attentively, asked a few questions, and engaged in little substantive back and forth discussion.

**9. Nature of Mr. Meese's Meetings
with the RBOCs**

Mr. Meese's meetings with representatives of four of the seven RBOCs -- Pacific Telesis, Bell Atlantic, BellSouth, and Ameritech -- cannot accurately be characterized as simple courtesy calls. Their purpose, according to the RBOC executives, was to present the views of the RBOCs. Mr. Meese testified that he thought that the company representatives "wanted to brief [him] as to their concerns." Several of the RBOC officials stated that they achieved what they had hoped to accomplish at the meetings.

The common theme was to protest the restrictions imposed on the RBOCs by the MFJ and to advocate that the Department of Justice improve the situation. In addition, each of the four RBOCs raised specific concerns as well. These included matters pending before the Department of Justice, such as Pacific Telesis' proposed acquisition of Communications Industries, Inc. They also included concerns relating to the Department's administration of the waiver process under the MFJ, and complaints about specific elements of the MFJ such as the information services restriction and the timing of the triennial review.

The meetings therefore cannot be characterized as non-substantive. At the same time, according to witnesses at the Department of Justice, nothing of significance resulted from the meetings.

D. Other Correspondence

As noted above in the discussion of Mr. Ginsburg's nomination, Mr. Wallach assisted Mr. Meese in the process of interviewing candidates for Department of Justice positions. In addition to discussions Mr. Meese presumably had with Mr. Wallach arising out of the interview process and concerning telecommunications policy, Mr. Meese received two letters from Mr. Wallach that gave advice on telecommunications matters.

In February of 1985, Mr. Wallach recommended to Mr. Meese, as one suggestion in a long letter concerning Mr. Wallach's "concepts and plans for the Department," that the Department of Justice consider conducting a review of the consequences of the AT&T divestiture.

On December 19, 1986, Mr. Wallach sent Mr. Meese a memorandum drawing Mr. Meese's attention to the report Mr. Huber completed in November of 1986. Mr. Wallach related the recommendation of "M.H." (Michael J. Horowitz, a partner at Dickstein, Shapiro & Morin) that Mr. Meese meet with Mr. Huber.^{178/}

Mr. Wallach's letter recounted a prior conversation between Mr. Wallach and Mr. Meese, and stated: "As we

^{178/} Mr. Wallach was at this time of counsel to Dickstein, Shapiro & Morin. On January 6, 1987, that law firm was retained by the seven RBOCs to compile and organize materials given by the RBOCs to Mr. Huber. Mr. Horowitz did not believe he was aware, at the time of his lunch with Mr. Wallach, of any expected retainer agreement or work already being done by the firm relating to this project.

discussed at that time, and you indicated your familiarity, the consequences of this decree modification could be enormous in terms of our ability to compete with Japan, Germany and France in new eras of telecommunications." At the time of this letter, one RBOC objective was to obtain authority for overseas ventures.

E. Nature of Mr. Meese's Participation in Telecommunications Matters Before the Department of Justice, 1985 through 1986

Mr. Meese participated in a number of ways in telecommunications industry issues generally, and RBOC matters specifically, that were before the Department of Justice. Mr. Meese held meetings with Assistant Attorneys General for Antitrust Ginsburg and Rule at which issues of concern to AT&T, the RBOCs and the telecommunications industry were discussed. He was informed regularly by information memoranda of important telecommunications matters before the Antitrust Division. The Attorney General corresponded by letter and telephone on RBOC-related matters with officials from other government entities, including the Department of Commerce and Congress. He had telephone conversations with Secretary Baldridge, possibly about the January 1987 report to the Court, prior to applying for a Section 208(b) waiver. His activities included meetings and correspondence with representatives of AT&T, the RBOCs, and other telecommunications companies. He spoke with Judge Clark at least twice on matters of concern to Pacific Telesis.

As stated above, the evidence shows that Mr. Meese participated personally and substantially in at least two particular telecommunications matters before the Department of Justice. First, Mr. Meese approved the long-range AT&T policy plan presented to him on October 17, 1987, which among other things established a process of formulation of the January 1987 recommendations by the Department of Justice to the Court. At the time of that approval, Mr. Meese knew that the Antitrust Division planned to move toward removing or relaxing the restrictions imposed on the RBOCs by the MFJ, a policy also advocated by and favorable to the RBOCs.

Second, Mr. Meese approved the Antitrust Division's plan to obtain the enactment of legislation designed to transfer to the FCC the responsibilities of the Department of Justice and the Court under the MFJ.

PART FOUR

MR. AND MRS. MEESE'S TAX REPORTING AND PAYMENTS FOR 1985

The income tax returns filed by Mr. and Mrs. Meese for 1981 through 1986 were reviewed by the office of independent counsel in the course of the specific item financial analysis of their affairs. In addition, the work papers and other records of Mr. Meese's accountants who prepared the returns were obtained. Two of the accountants, including Mr. Meese's principal accountant, were interviewed [GRAND JURY MATERIAL DELETED] concerning the preparation of the Meeses' tax returns. Mr. Meese's principal accountant also submitted a declaration. Mr. Meese testified in a deposition, and submitted a declaration concerning his recollection of these events.

The evidence shows that the Meeses did not report on their original 1985 joint federal income tax return filed on October 15, 1986, any gain from certain sales of securities which they knew were made in May and June of 1985, nor did they otherwise inform the Internal Revenue Service of the sales transactions. The unreported proceeds from the sales amounted to \$54,581. The reason for the failure to report was that Mr. Meese had not gathered and furnished to his accountant the data needed to report the sales transactions on a timely basis.

Both Mr. Meese and his accountant stated that Mr. Meese intended to file an amended return reporting these

transactions, and, in fact, after October 15, 1986, Mr. Meese took intermittent steps to gather the necessary data. Capital gains of \$14,606 from those transactions were reported on an amended tax return filed on or about February 6, 1988, shortly after the scheduling of the grand jury appearances for the Meeses' accountants. The Meeses paid \$2,875 in overdue federal tax payments and interest with the amended 1985 tax return.^{179/}

The office of independent counsel has examined the events in connection with the original filing and subsequent amendment of the 1985 return. As explained in the legal analysis of this Report, the independent counsel has determined that a trier of fact would probably conclude beyond a reasonable doubt that Mr. Meese violated the provisions of 26 U.S.C. § 7206(1) by willfully filing a materially false tax return, and of 26 U.S.C. § 7203 by willfully failing to pay tax at the time required by law. However, for the reasons set forth in the legal analysis, the independent counsel has

^{179/} As discussed below, this payment was based on a calculation by Mr. Meese's accountants that the Meeses had an additional tax liability of \$2,454 payable on October 15, 1986, resulting from the securities sales. This reflected a substantial computational error in the determination of the Meeses' cost basis for AT&T stock sold in May and June, 1985. When the appropriate corrections in the calculation are made, it appears that the total amount of capital gains omitted from the Meeses' original 1985 return was \$20,706, not the \$14,606 reported on the amended return, and the additional tax due was \$3,479, not \$2,454.

determined that in the specific circumstances of this case these probable violations do not warrant prosecution.

I. MR. AND MRS. MEESE FAIL TO REPORT ON THEIR 1985 INCOME TAX RETURN ANY INCOME FROM THE SALES OF SECURITIES IN MAY AND JUNE, 1985

A. Tax Return Preparation Procedure

In 1981, Mr. Meese retained John R. McKean, a San Francisco certified public accountant, to prepare income tax returns for the Meeses. Later in 1981, Mr. McKean was appointed to the Board of Governors of the United States Postal Service, a position which brought Mr. McKean to Washington, D.C., during the first week of each month. Mr. McKean met from time to time with Mr. Meese concerning the Meeses' tax matters when Mr. McKean was in Washington.

In connection with the Meeses' tax returns, Mr. McKean followed his office's standard procedure for obtaining information from clients. Near the end of each year, Mr. McKean attempted to meet with his clients to review their tax situation for the past year. Early in the following year, Mr. McKean asked his clients to complete questionnaires, called "systemizers," which reflected the information needed for the preparation of the tax returns for the year just ended. The systemizer included the categories of income and expense from the client's prior tax return as a means of directing the client to areas of inquiry relevant for the next tax return. The Meeses routinely provided Mr. McKean with

information through the completion of a systemizer or the submission of the same information on comparable schedules.

When necessary, Mr. McKean obtained for his clients extensions of time for the filing of income tax returns. Two extensions were available for tax returns during the years examined: (1) an extension through August 15 of a given year, granted automatically upon the timely filing by April 15 of IRS Form 4868 with full payment of the taxpayer's estimated tax liability for the preceding year, and (2) a further extension through October 15 of that year upon a showing of reasonable cause on IRS Form 2688 timely filed before the first extension had expired.

For some years, it had been the practice of the Meeses to avail themselves of both extensions, and not to provide their accountants with the data needed for the preparation of their income tax returns for the preceding year until October, shortly before the final deadline. They followed this practice in 1986 in connection with the filing of their 1985 return.

B. The Meeses Sell the Majority of Their Securities in 1985.

In years prior to 1985 the Meeses generally had not engaged in substantial securities sales. In May 1985, however, as a result of commitments made by Mr. Meese in his confirmation hearings, the Meeses sent the majority of their securities to their money manager, Mr. Wayne Franklyn Chinn,

with instructions to sell the securities and place the proceeds in the Meese Partners investment account. Mr. Chinn sold the securities on behalf of the Meeses in May and June, 1985, and transferred the proceeds of \$54,581 to Meese Partners. The Meeses realized a net capital gain of \$20,706 for tax purposes on the sales of these securities.^{180/}

In March 1986, Mr. Chinn sent Mr. and Mrs. Meese the monthly statements for the brokerage accounts through which these securities were sold. These statements identified the sale transactions, including the sales proceeds, but did not include any information concerning the cost or other basis of the securities, information that was unknown to Mr. Chinn.

^{180/} This figure includes the correction of an accounting error in the calculation of the cost basis of AT&T shares, as discussed infra.

As adjusted, it appears that the Meeses realized \$22,275 in capital gains and \$1,569 in capital losses from these securities sales, which resulted in the net capital gains of \$20,706. Capital losses were realized on nine out of the 30 securities sold; six of the losses were on interest-bearing bonds, two of the losses were on common stocks, and one was on mutual fund shares. The securities on which losses were realized constituted a relatively small portion of the total value and cost basis of the securities sold. The proceeds from the sales of these nine securities (\$4,009) were approximately seven percent of the proceeds from all the securities sales (\$54,581, inclusive of \$92 of accrued interest which was not part of the capital-gains calculation), and the basis of these nine securities (\$5,578) was approximately 16 percent of the basis of all the securities sold (\$33,782). The Meeses' net capital gain of \$20,706 represented a 61 percent appreciation in value over the \$33,782 basis of the securities.

C. The Meeses File a 1985 Federal Income Tax Return Which Fails to Report any Gain or Loss from Their Sale of Securities in 1985 or to Disclose that Sales Had Occurred

At Mr. Meese's request, Mr. McKean obtained extensions for the filing of the Meeses' 1985 tax return from the filing date of April 15, 1986, until October 15, 1986, the last date permitted by law. On October 13, 1986, two days before the return was due to be filed, Mr. McKean received from Mr. Meese the "systemizer" containing part of the Meeses' 1985 tax data and a Form 1040 income tax return for 1985 signed in blank by the Meeses.

The systemizer, which Mr. McKean's office had sent to the Meeses many months earlier for completion, included a listing prepared by Mr. McKean's office of the separate stocks, bonds, mutual funds and interest-bearing accounts from which the Meeses had derived dividends and interest in the prior year, 1984. In the category of stocks and mutual funds, there were 34 separate listings, all of which were held jointly or by Mrs. Meese alone. For 21 of the listings, the 1985 information provided by the Meeses on the systemizer showed either reduced dividend payments or no dividend payments in 1985. In the category of bonds and interest-bearing accounts, the systemizer listed 13 separate items, of which 11 produced less interest income in 1985 than in 1984. However, despite the noticeable reduction in the dividend and interest income, Mr. Meese had not checked any of

the boxes printed by each listing on the systemizer to report securities sold during the year. The Meeses also provided no information on the systemizer concerning either the sales proceeds or the cost or other basis for any securities sold during 1985.

In a telephone conversation in October several days earlier, probably on or about October 7, 1986,^{181/} Mr. Meese informed Mr. McKean that securities had been sold in 1985. He said that he was planning to leave for Mexico and did not have in hand information as to the sale proceeds or as to the cost or other basis of any of the securities, including the substantial portion of their holdings that had been inherited by Mrs. Meese from her mother. The two men then discussed how to proceed in the circumstances.

Mr. McKean mentioned that the cost bases of inherited securities could probably be ascertained from an estate tax form, and asked Mr. Meese to obtain the form for him. Apparently as a result of Mr. McKean's suggestion, a member of Mr. Meese's staff requested that information from the attorney for his mother-in-law's estate. The attorney

^{181/} Mr. McKean recalled that the conversation occurred "around October 10," but Mr. Meese recalled that the conversation occurred before a trip to Mexico which commenced on October 8.

sent the information to Mrs. Meese in Washington, D.C., where it was received on October 13, 1986, while Mr. Meese was still out of town. It was not given to Mr. McKean until January 1987.

Mr. Meese's deposition testimony showed that, during the conversation with Mr. McKean, the question was raised whether he would owe any tax as a result of these transactions.^{182/} His testimony indicated that he was aware of his tax and reporting obligations. He stated, "we were unable, or my accountant was unable to get the bases and to get computations of the taxes due on the securities we sold in 1985."

In a sworn declaration, Mr. Meese stated that he and Mr. McKean discussed the question whether there would be a

^{182/} In his deposition testimony concerning this conversation, Mr. Meese was asked:

Q. "At that occasion, the issue came up as to whether you had to pay any tax on these securities transaction proceeds, is that correct?"

A. "Right."

Q. "Did he raise it or did you raise it?"

A. "I'm sure I -- well, I'm not sure who raised it. I'm sure I told him about the securities transactions, and maybe they were indicated on the forms I left with him. In any event, I'm sure that one of the two of us raised it, probably me."

gain or loss, in view of the fact that the basis of some of the securities might have been "stepped-up" to their fair market value in his mother-in-law's estate. Mr. Meese did not state in his declaration that he believed that he did not have a net gain on the securities sales.

In an interview, Mr. McKean acknowledged that he was broadly familiar with the nature and size of the Meeses' holdings of securities and that he believed at the time that the securities probably had appreciated in value during the period they were owned by Mr. and Mrs. Meese. According to his recollection, his discussion with Mr. Meese did not go into the question whether there was a probable additional tax liability; it was limited to the need to file an amended return and for Mr. Meese to obtain the necessary basis information. The evidence shows that the basis information was in the Meeses' possession or available to them. It was not in Mr. McKean's possession.

Mr. McKean, according to [GJMD] interviews, suggested to Mr. Meese, and Mr. Meese agreed, that if the necessary data were not obtained by the filing deadline of October 15, the return be filed without reference to these transactions and that an amended return be filed "as soon as possible." Mr. McKean has stated that he thought his suggested course of action was "appropriate and responsible" because he trusted the integrity of his client and expected that the amended return would be filed promptly. Mr. Meese

has stated that he "accepted Mr. McKean's advice in good faith and in the belief that it was the best and most appropriate method of proceeding under the circumstances."

There is no testimony or other evidence that Mr. McKean's suggestion to Mr. Meese was anything other than a pragmatic solution to a problem -- a "method of proceeding," in Mr. Meese's words. Specifically, there is no testimony that Mr. McKean's suggestion was tendered by Mr. McKean, or received by Mr. Meese, as a professional "opinion" concerning the legal sufficiency of the proposed course of action in terms of satisfying Mr. Meese's tax reporting and payment obligations. There is no evidence that Mr. McKean advised Mr. Meese that he did not owe any tax on the securities sales or that he had no legal duty to pay the tax due until an amended return was filed.

Mr. McKean stated that he considered and rejected before the return was filed the alternative of reporting the transactions on the original return by estimating the sale proceeds based on market prices during 1985 and using a zero basis or an estimated basis for the securities, subject to revision by an amended return at a later date. (As discussed below, this alternative was subsequently discussed by the two men in a December 1986 meeting concerning the need to prepare an amended return, at which time Mr. McKean stated to Mr. Meese that this would have to be done in the absence of cost basis information.)

Mr. McKean also stated that he did not consider or discuss with Mr. Meese in October 1986 or later the possibility of putting any notation or other reference to the securities transactions on the original tax return. Mr. Meese understood that the return as filed would not include any such disclosure or any other reference to the securities transactions. The Internal Revenue Service was not informed in any other way by the Meeses that they had engaged in securities sales transactions in 1985 that were not reported on the return, or that there was an intention to file an amended return.

A contemporaneous notation on the systemizer written by Mr. Lemon of Mr. McKean's staff stated, with respect to the unreported transactions:

Stocks and bonds were sold during 1985 but the information was unavailable for processing the 1985 tax return. When the information becomes available, we will file amended tax returns. We are assuming no gain or loss on the sales at this time.

It is not clear from the evidence who suggested that this notation and "assumption" be recorded. Mr. McKean has taken responsibility for it as the decision of his firm, not directed or approved by Mr. Meese. He stated that it was intended only to be a reminder to anyone consulting the work papers that an amended return had to be filed. He also stated that the no-gain-or-loss assumption was not based on any

factual inquiry or on any discussion with Mr. Meese, and that it was not consistent with his personal belief at the time. The notation supports the statements of Messrs. Meese and McKean that they intended to file an amended return.

Mr. McKean's firm filled out the 1985 income tax return with the information provided by the Meeses, and filed it on October 15, 1986. The Meeses claimed a refund of \$1,809, which they subsequently received.^{183/}

Although the 1985 income tax return filed for the Meeses on October 15, 1986, did not report any income from the sale of the securities sold in May and June, 1985, the return did disclose \$14,392 in other capital gains. The reported capital gains reflected the 1985 transactions of Meese Partners as reported on the Form 1065 partnership return

^{183/} There is no evidence that Mr. Meese knew prior to the filing of the return that the return as filed would show an overpayment of tax. Mr. Meese did not provide Mr. McKean with a signed, blank check for payment of any taxes that might be due, but Mr. McKean had on prior occasions made tax-related payments for the Meeses from his own funds, later receiving reimbursement from the Meeses. Because no trial tax return or other calculations had been attempted by the accountants prior to Mr. McKean's discussions with Mr. Meese, he could not have told Mr. Meese that there would be a refund. Prior years' tax returns did not show any consistent pattern of refunds or taxes due:

1980	--	\$9,378	tax due
1981	--	2,388	tax refund
1982	--	5,286	tax refund
1983	--	3,687	tax due
1984	--	612	tax refund

prepared by Mr. Chinn's accountant for Mr. Chinn and the Meeses.

**II. STEPS TAKEN TO AMEND MR. AND MRS. MEESE'S
1985 INCOME TAX RETURN**

**A. Steps Taken Prior to the Commencement of
This Investigation**

In December 1986, when Mr. McKean was in Washington, D.C., he and Mr. Meese met to consider the Meeses' 1986 tax situation. Mr. McKean took advantage of the opportunity to remind Mr. Meese of the need to amend the 1985 tax return to reflect unreported 1985 securities sales. Mr. McKean and Mr. Meese had not had any intervening conversations or written communications concerning this subject.

Mr. Meese told Mr. McKean that, while some of the securities sold in 1985 had been inherited, others had been purchased or received as a gift. The evidence shows that, despite Mr. McKean's request in October, Mr. Meese had not given Mr. McKean the information received in October from the attorney for the estate of Mrs. Meese's mother. In fact, as noted below, this information did not become available to Mr. McKean's office until January 1987. During the December conversation, however, Mr. Meese did give Mr. McKean certain information concerning the sale proceeds received by the Meeses from the unreported sales of securities in 1985. Also, either at the December 1986 meeting or shortly thereafter Mr. Meese gave Mr. McKean a two-page typewritten list of

securities, which included limited information concerning the probate proceedings for the will of Lillian Herrick, Mrs. Meese's mother. Mr. McKean was not aware of any other action taken by Mr. Meese to obtain the necessary information between October and December, 1986.

Mr. McKean testified that [

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] Mr. McKean also informed Mr. Meese at that time that his options included: (1) filing an amended return which reported all the proceeds of the securities transactions as income, on the assumption that the securities had been acquired, for tax purposes, for no cost (i.e., had a "zero basis"), and paying the tax and interest due on this sum; (2) obtaining cost information that was available, and estimating the cost bases of the other securities; or (3) locating the information necessary to determine the cost bases for all the securities. According to Mr. McKean, this was [

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] It was clear in Mr. McKean's recollection that Mr. Meese was aware prior to their December 1986 meeting that, as Mr. McKean put it [GJMD]

When he returned to San Francisco, Mr. McKean assigned the matter to one of his associates, Douglas Schultz. Mr. McKean gave Mr. Schultz the two-page typewritten list of securities that had been received from Mr. Meese. Mr. McKean told Mr. Schultz that a key document for the preparation of the amended 1985 income tax return was the estate tax return filed for Mrs. Herrick's estate.

In early January 1987, Mr. McKean again visited Mr. Meese in Washington, D.C. He brought with him a list of questions prepared by Mr. Schultz concerning both the 1985 amendment and the preparation of the 1986 tax return. Mr. McKean obtained the answers to those questions from Mr. Meese at the meeting. Mr. Meese gave Mr. McKean the name of the Oakland, California, lawyer who had handled Lillian Herrick's estate. Mr. McKean suggested to Mr. Meese that Mr. Schultz assist in obtaining the estate tax form. Mr. McKean recalled that he told Mr. Meese at the meeting that he must obtain the information needed to complete the amended return and [GJMD] At some time before January 15, 1987, Mr. McKean gave Mr. Schultz Mr. Meese's answers to Mr. Schultz' list of questions.

Also in January 1987, Mr. Schultz obtained either from Mr. Meese or from the attorney who handled the estate of Lillian Herrick, the Form 706 for the estate. The form listed the securities inherited by Mrs. Meese from her mother, and their valuation for estate tax purposes. At about this same

time, Mr. Meese provided Mr. McKean with the brokerage records received from Mr. Chinn some ten months earlier, reflecting the 1985 sales of securities. Also in January or February, 1987, Mr. Meese sent Mr. McKean his handwritten analysis of the disposition of the securities.

After reviewing the brokerage records and the Form 706, Mr. Schultz ascertained that, as Mr. Meese had previously indicated, not all of the securities were inherited. Mr. Schultz determined that a substantial part, approximately 30 percent, of the securities sold in 1985 had not been obtained through the Herrick estate. However, Mr. Schultz had no information relating to the cost or other basis of those securities. On February 28, 1987, Mr. Schultz prepared for Mr. McKean a memorandum in which he identified the securities sold in 1985 that had not been obtained by the Meeses from the Herrick estate. According to Mr. Schultz, without further information about the cost basis of these securities, he was unable to do anything further to prepare the Meeses' amended 1985 return.

Mr. McKean met with Mr. Meese again in Washington D.C., sometime between February 28 and March 5, 1987. At this meeting, Mr. McKean gave Mr. Meese a copy of Mr. Schultz's memorandum of February 28. Mr. Meese stated that he would undertake to provide the information needed to complete the amended 1985 return.

B. In Response to the Independent Counsel's Investigation, Mr. Meese Requests a Letter from His Accountant Acknowledging The Need to File an Amended 1985 Income Tax Return

On May 28, 1987, a grand jury subpoena calling for the production of the Meeses' federal income tax returns was accepted by Mr. Meese's counsel. Mr. McKean recalled

[

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] As

requested by Mr. Meese in the telephone call, Mr. McKean also sent him a copy of the original 1985 income tax return. On June 15, 1987, Mr. Meese's counsel, in response to the subpoena of May 28, provided the office of independent counsel Mr. McKean's letter and a copy of the original 1985 income tax return.

On August 14, 1987, Mr. Meese's lawyers contacted one of Mr. McKean's partners and requested a calculation of the Meeses' potential additional tax liability for 1985. In response, Mr. Schultz prepared a schedule of the income to be reported if the cost bases for the open items could not be determined and the entire sale proceeds of those securities were reported as income. This schedule showed that the Meeses had a potential obligation to report \$36,723 of previously unreported capital gains for 1985.

C. The Amended 1985 Tax Return Is Completed
At the End of 1987.

Mr. McKean specifically recalled [

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] At some point between the early March 1987 meeting in Washington, D.C., and an October 13, 1987 meeting in California -- [GJMD] Mr. Meese could not say exactly when this occurred -- Mr. Meese informed Mr. McKean of the existence of a stock ledger containing information about the securities sold in 1985 that had been acquired from sources other than the Herrick estate.

On October 13, 1987, Mr. Meese visited Mr. McKean's office to provide Mr. McKean with the information needed for the completion of the 1986 tax return due to be filed on October 15, 1987. Mr. Meese also brought with him two stock

ledgers to be used to prepare the amended 1985 income tax return. The ledgers constituted the first information provided by Mr. Meese to his accountants in response to Mr. Schultz's memorandum that Mr. Meese had been given more than seven months earlier. One ledger, prepared in or about 1984, contained a list of securities showing their acquisition dates and the number of shares acquired.^{184/} It did not, however, record the purchase prices for the listed securities. The second ledger brought by Mr. Meese related to securities other than those sold in 1985. It therefore was of no use in the preparation of the amended 1985 tax return.

During the next two weeks, Mr. Schultz and a colleague, using the stock ledger, attempted to complete the amended 1985 tax return for the Meeses. Stock splits and other intervening events resulted in discrepancies between the numbers of shares listed as purchased in the ledger and the numbers of shares known to have been sold in 1985. In addition, because the ledger did not show the cost or other basis of the securities at the time they were acquired, that information had to be obtained from public records.

By early December 1987, Mr. McKean's office had virtually completed a schedule reflecting the additional

^{184/} Contrary to Mr. Meese's statement in his declaration that this ledger had been started in the mid-1970s and not used for several years, it bears a publisher's copyright date of 1983.

capital gains income to be reported on the Meeses' amended 1985 income tax return. Some additional information was still needed to account for all the Meeses' holdings in certain of the regional Bell operating companies resulting from the AT&T divestiture. When Mr. Meese next came to Mr. McKean's office on December 13 or December 14, 1987, he brought with him the necessary information regarding those holdings.

**III. FILING OF THE AMENDED 1985 TAX RETURN ON
FEBRUARY 6, 1988**

By the end of December 1987, Mr. Schultz had completed the amended 1985 federal and state income tax returns for the Meeses based on the information submitted by Mr. Meese in October and December 1987. On January 28, 1988, immediately after the scheduling of appearances by Mr. McKean and Mr. Schultz before the grand jury, the completed returns were sent to the Meeses for signature and filing.^{185/} The Meeses filed the returns on or about February 6, 1988.

The amended 1985 federal income tax return reported net capital gains from the securities sales of \$14,606, resulting in additional income (40 percent of net capital gains) of \$5,843, and reported total additional tax obligations to the United States, the State of California and

^{185/} Intervening vacations of Mr. Schultz and Mr. McKean appear to have delayed the transmission of these returns to the Meeses approximately by one month.

the Commonwealth of Virginia of \$3,330. The reported additional federal tax was \$2,454 plus \$421 in interest, for a total of \$2,875.

The office of independent counsel has determined from records maintained by Mr. McKean relating to the securities sold by Mr. and Mrs. Meese that a computational error was made in calculating the gain on the Meeses' sale of AT&T stock in 1985. The error resulted from the failure to reduce the cost basis of the AT&T stock to reflect AT&T's divestiture of the regional Bell operating companies. Pursuant to a basis-adjustment formula known to the accountants, the post-divestiture AT&T stock basis should have been reduced to 28.6743 percent of the basis of the pre-divestiture AT&T stock. The accountant's workpapers show that they did the basis-adjustment calculations. Due to an apparently inadvertent error, the schedules filed with the Meeses' amended 1985 income tax return reflected the original basis instead of the post-divestiture basis, thus understating by \$6,100 the net capital gain resulting from the sale of the Meeses' securities and understating the additional tax liability by \$1,025. Accordingly, the total federal tax liability from these securities sales was \$3,479, rather than \$2,454. There is no evidence that Mr. Meese was aware of this accounting error.

PART FIVE

**RELATIONSHIP BETWEEN AND AMONG THE MEESES,
E. ROBERT WALLACH AND HOWARD M. BENDER**

While investigating the relationship between Mr. Meese and Mr. Wallach, the office of independent counsel discovered evidence of additional activities engaged in by Mr. Wallach which, in conjunction with certain actions of Howard M. Bender, a Washington, D.C. businessman, resulted in substantial benefits to Mr. and Mrs. Meese. Mr. Bender is one of three owners of Blake Construction Co., Incorporated (Blake Construction), a corporation engaged in the construction of buildings and the leasing of building space to governmental agencies and private entities principally in the District of Columbia area. He is also an officer of the Bender Foundation, a family organization, which annually donates money to charitable organizations and causes of its choice.

This section of the independent counsel's Report details actions that Mr. Wallach took in 1985 to assist Ursula Meese in obtaining gainful employment. It focuses on circumstances surrounding the Bender Foundation's grant of \$40,000 to the National Capital Chapter of the National Multiple Sclerosis Society (the Chapter) to underwrite in full a job at the Chapter for Mrs. Meese at a time when Blake Construction was engaged in lease renewal negotiations concerning a Department of Justice lease on space in a building in which Mr. Bender had a financial interest.

The independent counsel interviewed officials at the Department of Justice, officials at the General Services Administration, employees of Blake Construction, James E. Jenkins, former associates of Mr. Jenkins and other individuals to determine whether there was any connection between the \$40,000 grant to underwrite Mrs. Meese's salary and the lease-renewal matter pending before the United States government.

The independent counsel found no evidence of involvement by Mr. Meese or the Office of the Attorney General in governmental decisions affecting the lease renewal matter. As to Mr. Meese, then, there is no basis for a prosecution for accepting an illegal gratuity from Mr. Bender.^{186/} The independent counsel also has concluded that, based upon the available evidence, there is no basis for a prosecution of Mr. Meese for accepting an illegal gratuity from Mr. Wallach in connection with the matters discussed in this section of the Report.

^{186/} The independent counsel did find serious conflicts in the testimony of key witnesses concerning the nature and extent of Mr. Wallach's involvement in the effort to persuade the Bender Foundation to underwrite a job for Mrs. Meese. However, as indicated elsewhere in this Report, Mr. Wallach has asserted his privilege not to be compelled to be a witness against himself, and is not as yet available as a witness in this matter.

**I. DECEMBER 1984 -- MR. WALLACH ATTEMPTS TO
FIND EMPLOYMENT FOR MRS. MEESE**

When Mrs. Meese first moved to Washington, D.C. in 1981, she did not immediately seek or obtain employment. In early 1982, she began working as the Director of the William Moss Institute, which was affiliated with The American University in Washington, D.C. She worked in that full-time position until the death of her second son, Scott, in the summer of 1982.

Following her son's death, Mrs. Meese worked for the Institute on a part-time basis, which resulted in a commensurate reduction in her salary to \$40,000 a year. When the three-year research program at the William Moss Institute was completed in December 1984, Mrs. Meese decided not to seek additional gainful employment until her daughter completed her senior year of high school. Mrs. Meese's intention was to stop working for a year and return to a paying position in January 1986.

After Mrs. Meese's job at the William Moss Institute ended, Mr. Wallach, apparently without the knowledge of Mr. or Mrs. Meese, wrote at least three letters to businessmen seeking employment opportunities for Mrs. Meese. Mr. Wallach asked each of them whether he would be interested in hiring Mrs. Meese "to coordinate charitable undertakings." In one of the letters, Mr. Wallach stated: "This is a matter of some urgency." In the other two letters, he said that it was a

matter "of considerable importance." In each of the letters, Mr. Wallach wrote that Mr. and Mrs. Meese were unaware of his initiation of those efforts.

No favorable response resulted from any of the three inquiries. However, Mr. Wallach's interest in finding employment for Mrs. Meese did not abate. In June 1985, he turned to his friend Mr. Bender. Mr. Bender and Mr. Wallach first met in 1982 through connections that Mr. Bender's wife, Sondra, and Mr. Wallach had with The American University. The Benders and Mr. Wallach soon became close friends, and a cordial social relationship has been maintained between them over the years.^{187/}

**II. JUNE 27, 1985 -- HOWARD M. BENDER SUGGESTS THAT
MRS. MEESE WORK FOR A BENDER FAMILY RADIO STATION**

Mr. Bender first met Mrs. Meese when he and his wife dined with her and Mr. Wallach at his invitation at a Washington, D.C. restaurant, on Thursday, June 27, 1985. Mrs. Bender was already acquainted with Mrs. Meese because both were members of the Board of Trustees of The American

^{187/} Mr. Bender disclosed during his grand jury testimony that recently he had lent Mr. Wallach \$200,000. The loan agreement was executed on February 22, 1985. Mr. Bender received a promissory note and a deed of trust on real property owned by Mr. Wallach. A separate agreement provided that Mr. Bender would advance Mr. Wallach additional funds up to a total of \$500,000 if a deed of trust in the amount of \$525,000 were delivered to Mr. Bender.

University. According to Mr. Bender, Mr. Wallach had previously told him that Mrs. Meese was looking for a job, and had asked if he knew of one for her.

During the course of the dinner, a number of subjects were discussed, including Mrs. Meese's concern about the problems of teen-age suicide and domestic violence. According to Mr. and Mrs. Bender, the subject of Mrs. Meese's desire to obtain a paying position arose during the dinner.

Mr. Bender recalls that he and Mrs. Bender stated that the Bender family owned a radio station in the District of Columbia, WWDC-101, and that Mrs. Meese might be employed there to conduct public interest programs on subjects such as the problem of teen-age suicides. Mr. Bender testified that Mrs. Meese seemed interested in the suggestion, and, accordingly, Mr. Bender said he would contact the manager of the station and arrange to have Mrs. Meese meet with him.^{188/}

According to Mr. Wallach's calendar, he met with the Benders at 1:30 p.m. on Friday, June 28, 1985, the day after the dinner. Later, in a letter to his daughters, Mr. Wallach

^{188/} Mrs. Meese recalled the dinner, but is certain that no discussion of a radio station job occurred on that occasion. She did recall that Mr. Wallach, on "the next day or the next couple of days" after the dinner, called and said that Sondra Bender had come up with a "great idea" for Mrs. Meese. Mr. Wallach deferred discussion of this "idea" until after Mrs. Meese returned from her scheduled July 1985 trip to Kenya for the United Nations Decade for Women Conference.

recounted how this meeting was a "three hour lunch with the Benders . . . talking a lot about my general activities in Washington and ways in which they needed some help in their business. That evening, I saw Ed and then returned to San Francisco"189/

Five days later, on Wednesday, July 3, 1985, Mr. Wallach wrote the following "Personal & Confidential" letter to Mr. Bender:

Dear Howard:

Ursula has left for Kenya and will not return until approximately the 1st of August from one trip or another. By that time, I would appreciate it very much if we had structured a concept to present to her. I cannot tell you how excited I am about the prospects discussed at our meeting. The idea of the radio format has almost unlimited appeal. I have cleared it with my good friend and he is equally appreciative and enthusiastic.

I think this has tremendous potential for Ursula and almost unlimited potential, even if indefinite, for other avenues. . . .

Warmest personal regards and, my sincerest thanks.

With warmest affection to you and
Sandra [sic],

e. robert (bob) wallach

189/ Mr. Meese returned to Washington, D.C. at approximately 3:15 p.m. on June 28 after an overnight trip. According to Mr. Wallach's calendar, the two met at 5:00 p.m. that evening.

Mr. Wallach's reference to "my good friend" was presumably to Mr. Meese.

Mr. Meese testified during his deposition that he was aware of the discussion about a radio station job for Mrs. Meese, and that this may have been discussed with Mr. Wallach while they were attending the American Bar Association meeting in England in July 1985. Mr. Meese, according to his testimony, knew that Mr. Wallach and Mrs. Meese were discussing job possibilities for her. He was not certain, but he assumed that Mrs. Meese may have had in mind a position with a salary of \$40,000 a year.

Despite Mr. Bender's asserted interest in arranging for a job for Mrs. Meese with his radio station, he took no immediate action and the matter lay dormant for several months.

III. MARCH 1, 1985 -- A BENDER PARTNERSHIP BUYS THE CHESTER ARTHUR BUILDING

In the meantime, events involving Mr. Bender's business interests were taking place relevant to this aspect of the independent counsel's investigation.

As noted above, Mr. Bender is one of the owners of Blake Construction, one of the largest construction companies in the District of Columbia area. It has constructed numerous buildings, including the FBI building, the Forrestal Building, the HEW Building, the Bethesda Naval Hospital, and the new

Walter Reed Hospital. As Mr. Bender phrased it,

[GRAND JURY MATERIAL DELETED]

Blake Construction and other entities owned by its stockholders owned buildings that were leased to various United States government agencies, including the Department of Justice. In December 1984, a Bender partnership known as 425 I Street Associates Limited Partnership, of which Mr. Bender was a partner, was formed for the purpose of purchasing the Chester Arthur Building located at 425 I Street, N.W., Washington, D.C., for the sum of \$37.5 million. Blake Construction was the management and leasing agent for the partnership.

Major tenants in the Chester Arthur Building were the Immigration and Naturalization Service (INS), a component of the Department of Justice, and the Office of Information Technology of the Department of Justice (Data Center). The Data Center occupied about 100,000 square feet, and the INS about 150,000 square feet. These two tenants occupied about 80 percent of the available space in the building. The Department of State and the District of Columbia government also leased space in the Chester Arthur Building.

The partnership purchased the Chester Arthur Building at an opportune time; the long-term leases on the space occupied by the Department of Justice agencies, which provided for a relatively low rental, were due to expire on March 20, 1986. Blake Construction representatives felt

certain that new long-term leases would be obtained at higher rentals, which would substantially increase the value of the building.

The General Services Administration (GSA) is the agency of the United States government which conducts lease negotiations on behalf of government agencies occupying space in privately owned buildings. However, the tenant agency, in this case the Department of Justice, has an influential role in deciding whether or not it will continue to occupy space following expiration of a lease.

IV. BLAKE CONSTRUCTION COMPANY REPRESENTATIVES SEEK TO RENEW THE LEASES

Immediately after purchasing the Chester Arthur Building on March 1, 1985, Blake Construction representatives began taking steps to reach an understanding with the GSA that the leases would be renewed for a ten-year period at an increased rental. Over the next seven months, many meetings were held between representatives of Blake Construction, GSA and the Justice Management Division (JMD) primarily concerning ordinary building maintenance and improvement concerns.

On September 30, 1985, a meeting was held among representatives of the Data Center, JMD, Blake Construction, and an outside consultant who had been hired by the Department of Justice to prepare a space study for the Data Center. At this meeting, Department of Justice officials spoke with Blake Construction representatives about perceived inadequacies in

the Data Center space at the Chester Arthur Building. Blake Construction previously was unaware that the Data Center space was thought to be inadequate.

As a result of the September 30, 1985 meeting, representatives of Blake Construction for the first time learned of the possibility that the lease on the space occupied by the Data Center might not be renewed, or that substantial and expensive changes might have to be made if the Data Center was going to remain as a tenant in the building.

As one Blake Construction witness testified,

[GRAND JURY MATERIAL DELETED] This possibility came as a shock; the same witness characterized the reaction to the September 30 meeting as the "beginning of the heartburn" for Blake Construction.

As noted above, the Data Center occupied approximately 100,000 square feet of space. Not to have obtained a renewal of the lease on that space, when renewal was thought to have been almost a certainty, would have been a financial blow to the members of the partnership. Also, time was a factor. It routinely might take from 12 to 14 months to negotiate a lease renewal for this amount of space, and the lease on the Chester Arthur Building space was due to expire in six months.

After the disturbing September 30 meeting at GSA, Blake Construction's leasing representatives worked diligently

through the fall to obtain a lease-renewal commitment from GSA. Blake Construction was consistently advised by the Department of Justice professionals and GSA that the Department was reviewing the matter and assessing its space needs. Finally, in early January 1986, GSA informed Blake Construction that the Department of Justice had advised it that the Department was prepared to commit to a lease renewal. The subsequent course of the lease negotiations is described infra.

**V. OCTOBER 1985 TO JANUARY 1986 -- MR. BENDER
 AND MR. WALLACH RENEW EFFORTS TO OBTAIN A PAYING
 JOB FOR MRS. MEESE**

In early October 1985, Mr. Bender made the long delayed telephone call to the manager of the Bender family radio station, and asked him to meet with Mrs. Meese to discuss a possible job for her at the station.

Also, on October 8, 1985, Mr. Meese met Mr. and Mrs. Bender for the first time at a dinner hosted by Mr. Wallach at a Washington, D.C. restaurant. Neither Mr. nor Mrs. Meese recalled any discussion at that dinner of the possible radio station job.

In early October 1985, Mr. Wallach suggested to the Benders that, through the Bender Foundation, they fund the salary that would be paid to Mrs. Meese for a new position being created by the Chapter.

As background, it is relevant that, almost from the beginning of her arrival in Washington in January 1981, Mrs. Meese had been active as a volunteer with the Chapter. Her efforts on behalf of that organization had been very much appreciated by, among others, Jeanne Bradley, the Executive Director of the Chapter. Mrs. Meese became a member of the Board of Trustees of the Chapter in 1983.

Among the contributors from time to time to the Chapter was the Bender Foundation. Prior to the fall of 1985, the Bender Foundation made grants to the Chapter in 1980, 1981, 1982, and 1985 of \$4,000, \$5,000, \$1,000, and \$1,000 respectively. In 1985, Blake Construction contributed \$5,000 for the purchase of a table at the Ambassadors Ball, an annual fundraising event sponsored by the Chapter. Mrs. Meese was a co-chairman of the Ball that year. The \$5,000 grant from Blake Construction was solicited by Mr. Wallach, who also solicited \$15,000 from Wedtech for the purchase of three tables, \$5,000 from Jeffrey N. Cohen for the purchase of one table and \$5,000 from Nofziger & Bragg Communications for the purchase of one table.

One of the activities conducted by the Chapter is a program called Operation Job Match (OJM). That program began in 1980, and originally involved a unique group concept for handling the job needs of individuals afflicted with multiple sclerosis.

In 1980, the Department of Education made a grant of \$150,000 per year for three years to support OJM. The program was successful, and the \$150,000 grant was renewed for an additional three-year period, with the stipulation that the program would be expanded to include individuals afflicted with other handicaps.

In the fall of 1985, the Board of Trustees of the Chapter had under consideration the question of securing continued funding of OJM by the Department of Education, and also securing additional funds to support a national program that would involve replicating OJM at other chapters of the National Multiple Sclerosis Society. Among the specific matters discussed was the need to hire a Development Director to raise funds from the private sector to support a national replication program.

Key representatives of the Board of Trustees of the Chapter held a meeting on October 10, 1985, at which the above matters were discussed. After the meeting, Mrs. Meese, in a private conversation with Mrs. Bradley, mentioned that she had discussed with Mr. Bender a possible job with a radio station, and sought Mrs. Bradley's advice as to the format for any radio interviews she might conduct. According to Mrs. Bradley, when she learned that the radio station was owned by the Bender family, she informed Mrs. Meese of the Bender Foundation's contributions to the Chapter. She suggested that Mr. and Mrs. Bender be approached for a grant to the Chapter

to be used to fund the position of Development Director of OJM. According to her testimony, Mrs. Bradley

[GRAND JURY MATERIAL DELETED] , and Mrs. Meese enthusiastically agreed.

At about this time, activities relating to a possible job for Mrs. Meese at the Bender's radio station and the possible job at the Chapter to be funded by the Bender Foundation coincided. As Mrs. Meese testified before the grand jury, "Mr. Wallach was the one that was sort of networking between the Benders and me and the radio station." Mrs. Meese told Mr. Wallach that the Executive Director "had this suggestion, and how do you think that would go." Mr. Wallach knew that Mrs. Meese had earned \$40,000 a year in her previous job at the Moss Institute, and, as Mrs. Meese testified, was aware that \$40,000 a year "was the money we would need to continue."

That Mr. Wallach was deeply involved in those efforts is shown by a personal and confidential letter dated October 16, 1985, which he sent to Mr. and Mrs. Bender at their residence with copies sent to Mr. Bender at Blake Construction and to Mrs. Meese.^{190/}

^{190/} None of these individuals recalls receiving this letter. It is noteworthy that the letter predates by only five days Mr. Wallach's conversation with a National Security Council staff member, David Wigg, about his desire to help the Meeses
(Footnote Continued)

Mr. Wallach referred in his letter to a meeting he and Mrs. Meese had with the manager of Mr. Bender's radio station. Mr. Wallach said that Mrs. Meese had conducted her "interview" brilliantly. Mr. Wallach then went on to say:

There is a suggested change in format, if it meets with your approval. I wanted to present it to you by letter so that you would have an opportunity to think about it before we met. There is also the chance that I will not be here when you return on the 25th and I wanted to keep things moving.

As you know, from your participation in the Ambassadors Ball, Ursula has been very active with the Multiple Sclerosis Society. They have been engaged in a very important project for some time, involving the retraining of victims of the disease, as well as other disabled persons, for occupations which make them largely self-sufficient. This has been subject to a major federal grant that now expires. If Ursula can obtain a grant for her salary, she can become the coordinator of that program. She will be able to govern her time and it will be consistent with her other responsibilities.

It will also not infringe upon her ability to tape thirteen shows.

In discussions with her, we settled upon a proposal for your consideration which seems appropriate and which may well satisfy all possible concerns. I have the particular concern in mind of her salary being paid by the station with the considerations which we discussed.

If the Bender Foundation were willing to provide a grant to the Multiple Sclerosis

(Footnote Continued)

improve their financial position which he felt had suffered due to Mr. Meese's lifelong employment in public service.

Society that they would, in turn, devote to her salary, that would solve that problem immediately. Such a deduction would be immediately tax deductible as the MS Society is a 503(c) entity. It would not even be necessary to designate the funds for a specific purpose.

It would then be possible for Ursula to sign a contract with whatever entity we determined upon to be appropriate for the series of half hour shows. If I may be so bold, I would suggest a grant to the MS Society in the amount of \$25,000-\$30,000 with the remainder as compensation to Ursula for her series. Obviously, I'm interested in the total combined amount.

Give it some thought and see what you think.

It goes without saying that she, Ed and I remain very grateful to you for your efforts and energies to accomplish these worthwhile goals.

I hope the trip was a wonderful success in all respects.

With much affection,

/s/ bob
e. robert (bob) wallach

erw:pf

cc: Howard Bender
c/o Blake Construction Co.
Ursula Meese

On October 23, 1985, Mr. Wallach wrote a memorandum to his file. He referred to his and Mrs. Meese's meeting with the radio station manager. He stated: "We discussed the arrangements and it all went well. Ursula will be preparing a set of topics for a thirteen set series of broadcasts and will

get in touch (with the manager) when she returns from Bulgaria."

However, Mrs. Meese decided for reasons of her own that she would not pursue the radio station job. That development, of course, lowered Mrs. Meese's salary expectations by whatever amount of compensation she would have received from the radio station. It is reasonable to infer from Mr. Wallach's interest in the "total combined amount," and his knowledge of the Meeses' needs, that his goal was to find one or more jobs for Mrs. Meese which would pay a total of \$40,000 a year.

With the radio station job out of the picture, the focus centered on the prospective position with the Chapter. There was no doubt that, if the Bender Foundation made a grant to fund the salary of a Development Director of OJM, the Director would be Mrs. Meese. No one else was considered for the position.

On October 29, 1985, Mrs. Bradley wrote a letter to Mrs. Bender and enclosed a solicitation letter to the Bender Foundation for "funding the salary of a person to direct and coordinate the efforts of the subcommittee of the Board of Trustees in exploring and securing private sector sources of funding the Chapter's 'Operation Job Match' program."

The letter of transmittal to Mrs. Bender stated "Bob Wallach suggested that we forward this grant request to your attention."

Mrs. Bradley testified that

[GRAND JURY MATERIAL DELETED]

The solicitation letter from the Chapter to the Bender Foundation did not request any specific amount of money for the salary of the Development Director of OJM, nor did it mention Mrs. Meese's name as the person being considered for the position. Mrs. Meese testified that she and the Executive Director did not discuss the amount of her salary.

Mrs. Bradley's testimony [GRAND JURY MATERIAL DELETED]

Whatever the amount of the grant, that amount would be

Mrs. Meese's salary, [GRAND JURY MATERIAL DELETED]

Mr. Bender testified that

[GRAND JURY MATERIAL DELETED]

Notwithstanding Mr. Wallach's earlier letter of October 16, Mr. Bender also testified that

[GRAND JURY MATERIAL DELETED]

191/

191/ Mrs. Bender is the President of the Bender Foundation. Determinations as to the recipients of grants are made by Mr. and Mrs. Bender.

On November 15, 1985, the Bender Foundation sent the Chapter a grant agreement which stated that the Board of Trustees of the Foundation had "approved a grant to the National Multiple Sclerosis Society . . . in the amount of Forty Thousand Dollars (\$40,000) for the Salary for the Development Consultant of Operation Job Match at the National Capital Chapter." Both Mr. and Mrs. Bender recalled that by November 15, 1985, when the Foundation made the grant to the Chapter, they knew that Mrs. Meese would be the Development Director.^{192/}

It is noteworthy that earlier that year, on April 26, 1985, the Chapter wrote to Mrs. Bender, in her position as President of the Bender Foundation, thanking her for a recent grant of \$1,000, and, after referring to budgetary constraints, requesting that the Bender Foundation consider increasing its grant from \$1,000 to \$10,000. There is no indication that the Bender Foundation responded

^{192/} Mrs. Meese testified before the grand jury that, in her opinion, the Benders did not make the \$40,000 a year grant for her salary simply because her husband is the Attorney General. She said that Mrs. Bender knew of Mrs. Meese's work on The American University's Board before Mr. Meese became Attorney General. "I think she knew of my abilities in doing operations." Mrs. Meese noted also that Mrs. Bender knew her "through Mr. Wallach, who was apparently good friends of theirs." Mrs. Meese acknowledged that she was the only person even considered for the job as Development Director of Operation Job Match. When asked if she thought the Benders just wanted to get her a job somewhere, Mrs. Meese responded "I think probably."

favorably to that request, or even answered the solicitation letter. However, seven months later, after Mr. Wallach's intervention, the Bender Foundation made a grant of \$40,000 to the Chapter earmarked for payment of Mrs. Meese's salary.

Mrs. Meese officially assumed her duties as Development Director of Operation Job Match on January 1, 1986. Prior to that date, on December 13, 1985, Mrs. Meese was paid a lump-sum advance of \$15,000. The Chapter had no prior history of giving such large advances. Mrs. Meese testified that she needed the money to pay bills.

The Bender Foundation grant of \$40,000 for Mrs. Meese's salary was renewed for 1987. Mrs. Meese again received a \$15,000 advance on her 1987 salary. The evidence shows that the money received by Mrs. Meese from the Chapter was deposited in a bank account jointly owned by her and Mr. Meese.

As of the date of this Report, the grant apparently has not yet been renewed for 1988. Mrs. Meese is still employed as the Development Director.

VI. MR. BENDER RETAINS JAMES E. JENKINS

In October 1985, when the Chester Arthur Building lease renewal negotiations were in apparent difficulty, Mr. Wallach met with James E. Jenkins, who was the sole proprietor of James Jenkins & Associates, Ltd., a consulting firm. Mr. Wallach told Mr. Jenkins about his friend

Mr. Bender and about Blake Construction. Among other things, Mr. Wallach informed Mr. Jenkins of the efforts of Blake Construction to renew the Chester Arthur Building leases with the GSA for the Department of Justice.

Following the meeting, Mr. Wallach sent Mr. Jenkins a letter dated October 14, 1985, confirming the "three separate projects involving Blake Construction Company." Mr. Wallach described one of the projects as follows:

They have a building in which both the Justice Department and INS are major tenants. The leases are coming up for renewal and they are interested in accomplishing that renewal at a fair rate of rental and, hopefully, for a ten-year period of time.

Mr. Wallach noted in the letter to Mr. Jenkins that Mr. Bender would be out of the country until October 25. He said that "Howard looks forward to meeting with you immediately upon his return."

Mr. Jenkins and his senior associate, Kenneth W. Wade, met with Mr. Bender on November 15, 1985. The evidence is in conflict as to why Mr. Bender was interested in retaining Mr. Jenkins. Mr. Bender recalled that

[GRAND JURY MATERIAL DELETED]

Mr. Jenkins recalled,

[GRAND JURY MATERIAL DELETED]

Mr. Bender

[GRAND JURY MATERIAL DELETED]

Mr. Wade recalled that

[GRAND JURY MATERIAL DELETED]

Mr. Wallach had previously suggested to Mr. Jenkins that he request an annual retainer of \$75,000 from Blake Construction. At the meeting, Mr. Jenkins requested a retainer in that amount, following which he and Mr. Bender entered into a handshake agreement for a one-year trial period.

Key company officials of Blake Construction were surprised and perplexed that Mr. Jenkins had been retained by Mr. Bender, as Blake Construction already employed individuals with extensive experience in all aspects of the company's business, including dealing with the United States government. Moreover, according to those officials, Blake Construction did everything "in-house," that is, the company did not use outside consultants to accomplish or promote company business.

The evidence is somewhat conflicting as to what role Mr. Jenkins played in the negotiations for the renewal of the Chester Arthur Building lease. Although this was the first item mentioned in Mr. Wallach's October 14, 1985, letter to him, Mr. Jenkins told investigators that he was not involved in the lease negotiations; that he never contacted the

Department of Justice about the leases; and that, after his initial meetings with Mr. Wallach, he did not discuss Blake Construction business with Mr. Wallach.^{193/}

Both Mr. Bender and Mr. Jenkins agreed that the retainer agreement did not prove to be worthwhile for Blake Construction. Mr. Jenkins and his company performed only a limited number of tasks for Mr. Bender throughout 1986, and Mr. Bender did not renew the retainer in December 1986.

The Justice Management Division had extensive and normal contacts with Mr. Bender's representatives in connection with lease-renewal negotiations and problems. But none of the JMD representatives reported any involvement by Mr. Meese or his office in the lease renewal discussions. Similarly, GSA representatives reported no unusual Department of Justice contacts about the negotiations.

The independent counsel developed no evidence of any contacts with Mr. Meese or his office by any representative of Blake Construction relating to the lease-renewal negotiations. Nor is there any evidence that Mr. Meese was involved in any

^{193/} It appears that Mr. Jenkins directed one of his employees to contact the GSA about the Chester Arthur Building lease in the summer of 1986. The available evidence indicates that that this contact resulted in Mr. Jenkins' advising Blake Construction that the leasing process was a very arcane procedure, and there was nothing he could do to assist the company with its lease dispute.

way in the lease-renewal discussions at the Department of Justice.

One witness, Mark W. Everson, the Deputy Commissioner of the INS, recalled being contacted by Mr. Wallach, in September or October 1986 concerning the lease at the Chester Arthur Building.^{194/} Mr. Wallach solicited Mr. Everson's help in persuading the Department of Justice to renew its lease on the space at the Chester Arthur Building (where Mr. Everson's offices were at the time).

^{194/} Mr. Wallach and Mr. Everson became acquainted in 1983 and became "close friends," according to Mr. Everson. In May 1985, on Mr. Wallach's recommendation, Mr. Everson was hired by Mr. Meese to be Special Assistant to the Attorney General on Management. He retained that title and position until July 1986, when he moved to the INS. His responsibilities as Special Assistant to the Attorney General included working on department space management projects.

Mr. Everson has no recollection of being involved in any discussions with Mr. Wallach or anyone else concerning the Chester Arthur Building lease renewal in the fall of 1985.

The independent counsel was particularly interested in Mr. Everson's recollection in this regard because of Mr. Wallach's apparent involvement in the lease renewal problems Mr. Bender's company was facing in early October 1985 at the same time Mr. Wallach was assisting Mrs. Meese in obtaining a job funded by the Benders.

Mr. Wallach's calendar entries showed two scheduled meetings with Mr. Everson during the October 1985 time period. One meeting was scheduled for Sunday, October 6, 1985, at Mr. Everson's home. According to Mr. Wallach's calendar, on Friday, October 4, 1985, Mr. Wallach had dinner with the Benders at the Four Seasons restaurant, and then attended the races with them on Saturday, October 5. His calendar also reflected a breakfast with Mr. Jenkins on Saturday morning, October 5, and a lunch with Mr. Meese on Sunday, October 6.

Mr. Wallach told Mr. Everson that the government's lease had expired on the building in March 1986, and GSA had not contacted Mr. Bender about renewing it. According to Mr. Everson's grand jury testimony,

[GRAND JURY MATERIAL DELETED]

As a result of that telephone call, Mr. Everson contacted Jeffrey Miller, the Deputy Assistant Attorney General in charge of the Office of Personnel and Administration for the Department of Justice, to inquire about the lease negotiations. According to Mr. Everson, Mr. Miller informed him that the GSA handled such matters, and did not want outside interference. Mr. Miller also said that it would not be appropriate for the Department of Justice to be pushing the GSA for lease action. Mr. Everson relayed this information to Mr. Wallach, and the matter was closed as far as Mr. Everson was concerned.

The lease-renewal papers were executed in May 1987. The new leases provided for a 10-year term on the space occupied by INS, and a five-year term for the space occupied by the Data Center. The new lease also provided for an increase in annual rental from about \$4.5 million to about \$5.6 million. Shortly before the leases were executed, Blake

Construction arranged to sell the Chester Arthur Building for the sum of \$60,119,000.

VII. MR. MEESE'S RELATIONSHIP TO THE ABOVE-DESCRIBED EVENTS

Mr. Meese testified in effect before the grand jury that his knowledge of Blake Construction was at most very skimpy. He said that at some point in time, he was not certain when, he learned that Mr. Bender was "the principal or perhaps the sole owner . . . of Blake Construction Company." Mr. Meese knew that Mr. Bender "owned the Bender Building." He also learned from Mrs. Meese that Mr. Bender's company "had been involved in the building of the Naval Hospital in San Diego." Mr. Meese recalled that Mr. Bender "was interested in bidding on the Canadian Embassy, and in the course of that it might have been mentioned that he had done other government buildings, but I don't remember anything specific."

Mr. Meese testified that he was not aware in the fall of 1985 that Mr. Bender had an ownership interest in private buildings leased by the government, and, specifically, he did not know that Mr. Bender had any ownership interest in the Chester Arthur Building. Mr. Meese also said that he had no knowledge that Mr. Bender had an interest in having a lease renewed on space in that building.

As a result of the Benders' generosity to Mrs. Meese, the Benders were twice invited to the White House to have lunch with Mr. and Mrs. Meese. At some time between

the two White House lunches, Mr. and Mrs. Bender invited Mr. and Mrs. Meese to their horse farm in Frederick, Maryland, for the day. Mr. Wallach was present on each of those three occasions.

The Benders also attended a number of functions sponsored by Mr. Wallach at which the Meeses were present.

CONCLUSIONS

Although Messrs. Wallach and Bender may have had ulterior motives in taking the actions described above, the evidence obtained by the independent counsel does not support a conclusion that Mr. Meese was aware of such motives, or that he performed any official action that benefited Mr. Bender.

After review and consideration of all of the foregoing facts, the independent counsel has determined that the currently available evidence relating to the lease negotiations and the funding of Mrs. Meese's salary by the Bender Foundation is insufficient to conclude that it involved Mr. Meese's acceptance of an unlawful gratuity.

PART SIX

**MR. MEESE'S FINANCIAL DISCLOSURES; FINANCIAL ANALYSES;
AND BENEFITS GIVEN AND RECEIVED BY MR. MEESE AND MR. WALLACH**

The independent counsel's investigation included a detailed examination of the financial records of Mr. and Mrs. Meese. The independent counsel, to the limited extent that information was available, also examined financial records of Messrs. Wallach, Chinn and London.

This portion of the Report discusses (1) the evidence developed by the independent counsel concerning Mr. Meese's financial disclosures to the Office of Government Ethics; (2) the question whether Mr. Meese illegally received anything of value, directly or indirectly, from Messrs. Wallach, Chinn or London; and (3) specifically, whether Mr. Meese performed any official act on behalf of Mr. Wallach which violated the bribery of gratuities provisions of the federal criminal law.

The independent counsel determined that Mr. Meese furnished some inaccurate financial information to the Office of Government Ethics. However, there is no basis for concluding that, in so doing, he acted willfully in violation of any federal criminal law.

The independent counsel conducted a complete specific item analysis of the financial records of Mr. and Mrs. Meese, as well as limited specific item analyses of the financial records of Messrs. Wallach, Chinn and London. The independent counsel determined, on the basis of currently

available evidence, that there is no indication that Mr. Meese illegally received anything of value from any of those three individuals.

The office of independent counsel investigated the evidence concerning benefits which Mr. Wallach provided Mr. Meese during the relevant period of time, as well as the official acts performed by Mr. Meese that benefited Mr. Wallach. The independent counsel has determined that the actions of Mr. Meese and Mr. Wallach can reasonably be attributed to the close friendship that exists between them, and that there is no basis for concluding that any official act performed by Mr. Meese on behalf of Mr. Wallach violated the bribery or gratuity provisions of the federal criminal statutes.

**I. FINANCIAL DISCLOSURES AND ETHICS COMMITMENTS
BY MR. MEESE**

At the time this matter was referred to the independent counsel, questions were raised concerning the disclosures by Mr. Meese on financial disclosure forms and other documents that he prepared pursuant to the Ethics in Government Act of 1978. The office of independent counsel has examined Mr. Meese's financial disclosure filings, and has inquired into related actions taken by Mr. Meese in connection with his obligations under the Ethics in Government Act of 1978.

A. Disclosures and Ethics Agreements during Confirmation Proceedings

Mr. Meese was nominated for the position of Attorney General on January 23, 1984. On February 8, 1984, in the course of his confirmation proceedings, Mr. Meese filed a financial disclosure form for 1983, on Form SF 278, with the Office of Legal Counsel of the Department of Justice. On February 23, 1984, this disclosure form was forwarded to the Director of the Office of Government Ethics (OGE) for certification to the Senate Judiciary Committee in connection with the confirmation hearings.

The Department of Justice provided Mr. Meese with advice concerning his ethics obligations and his disclosure obligations as he prepared for his initial confirmation hearings. During consultations for the 1984 hearings, the stock ownership of the Meeses in AT&T, Exxon and Texaco were specifically discussed because major litigation between the United States and those companies was being handled by the Department of Justice. The Office of Deputy Attorney General, the Land and Natural Resources Division, and the Antitrust Division recommended divestiture of the oil company securities and the telecommunications securities. The Civil Division and the Office of Legal Policy also recommended divestiture of the telecommunications securities. Notes of communications involving Office of Legal Counsel employees on February 22, 1984, indicated that the Department of Justice advised

Mr. Meese to divest himself of all those holdings or recuse himself from all those matters.

The February 23, 1984 cover letter submitted by the Office of Legal Counsel to the OGE set forth the commitment of Mr. and Mrs. Meese to sell their AT&T, Exxon, and Texaco securities. In addition, the letter reported the commitment of Mr. Meese to promulgate a recusal policy that would preclude him from participating in matters involving the entities listed in his financial disclosure report.

Mr. Meese submitted a letter to the OGE on February 29, 1984, in which he personally committed himself and Mrs. Meese to the sale of their AT&T, Exxon and Texaco securities. In the same letter, Mr. Meese stated that:

I will recuse myself from participation in any matter in which, in my judgment, it is desirable for me not to personally or substantially participate in order to avoid a possible appearance of impropriety (even if there is a lack of an actual conflict of interest). Such a policy, to which I am committed, will avoid any actual or apparent conflict of interest between my duties as Attorney General and my personal financial interests . . .

This letter, as an agreement with the OGE, became an "ethics agreement" under section 211 of the Ethics in Government Act of 1978, 5 U.S.C. § App-4. That section obligated Mr. Meese to notify the OGE of the fulfillment of his ethics agreement commitments following his confirmation.

After his nomination hearings were adjourned from March 1984 until January 1985 during the investigation by Independent Counsel Jacob A. Stein, Mr. Meese updated his financial disclosures and his ethics commitments. On January 10, 1985, in preparation for the resumption of hearings, he filed a Form 278 for the year 1984. On January 23, 1985, Mr. Meese wrote a letter to the OGE which qualified as a second ethics agreement. In that letter, Mr. Meese declared that he and Mrs. Meese intended to sell their stock in AT&T, Exxon, Texaco and the seven regional Bell operating companies (RBOCs). At that time, Mr. Meese also promised to: "disqualify myself from any matters involving the law firms that represented me in the Independent Counsel investigation, at least until the liability to those firms reported on my SF 278 is discharged."

The second ethics agreement repeated the general intention of Mr. Meese stated in the first ethics agreement:

[to] recuse myself from participation in any matter in which, in my judgment, it is desirable for me to do so in order to avoid an appearance of impropriety. Such a policy, to which I am committed, will avoid any actual or apparent conflict of interest between my duties as Attorney General and my personal financial interests.

Mr. Meese's Form 278 was forwarded to the OGE on January 24, 1985, by Acting Assistant Attorney General for Administration Anthony C. Liotta. In his cover letter, Mr. Liotta set forth the intention of Mr. and Mrs. Meese to

sell a number of the securities identified in Mr. Meese's separate ethics agreement, and the intention of Mr. Meese to promulgate a general recusal policy.

The Ethics in Government Act imposes financial disclosure obligations on public officials, including the Attorney General.^{195/} It sets forth an exemption from the general disclosure requirements for a financial arrangement that meets the criteria for a "qualified blind trust" as set out in the Act.^{196/} A Department of Justice employee who helped advise Mr. Meese during the confirmation proceedings expressed the opinion to the office of independent counsel that, in light of the relatively modest size of their holdings, it was unlikely that Mr. and Mrs. Meese would have been advised to create a blind trust. The disclosure forms completed by Mr. Meese on February 8, 1984, and January 10, 1985, expressly stated that Mr. Meese did not intend to create a qualified trust.

^{195/} Section 202(f)(1) of the Ethics in Government Act of 1978 requires the disclosure by a reporting individual of information specified in the Act "with respect to the holdings of and the income from a trust or other financial arrangement."

^{196/} Subsection (f)(2) exempts a "qualified blind trust" as thereafter defined from the disclosure obligations. Subsection (f)(3) sets forth the requirements that must be met by any "qualified blind trust," and specifically requires that a "proposed trust instrument and proposed trustee" be approved by the designated agency ethics officer.

Mr. Meese made a number of commitments with respect to his personal financial affairs in his testimony at his confirmation hearings. He suggested that it would be appropriate for him to disclose fully his family's financial holdings to the Department of Justice's Office of Legal Counsel and Office of Professional Responsibility. Mr. Meese stated that he would make "full information about my financial situation available" in his annual financial disclosure filings, and stressed his willingness to go "even beyond what is required by the financial disclosure form."

B. Actions Taken under Ethics Agreement and Disclosure Commitments

Mr. Meese was confirmed as Attorney General on February 23, 1985. On March 6, 1985, Mr. Meese held a meeting with members of the staff of the Office of Legal Counsel at the Department of Justice. At this meeting, Mr. Meese requested a statement of his ethics obligations.

On March 7, 1985, the Acting Assistant Attorney General for the Office of Legal Counsel, Ralph W. Tarr, sent Mr. Meese a memorandum summarizing the promises made by Mr. Meese during the 1985 nomination hearings.

Two memoranda dated March 13, 1985, responded to the March 6 request of Mr. Meese for a statement of his ethics obligations and the deadline for their completion. One memorandum provided an overview of Mr. Meese's obligations, and the second memorandum discussed his ethics agreement. The

second memorandum reminded Mr. Meese of his obligation to sell securities and promulgate a recusal policy by May 24, 1985.

On April 29, 1985, Mr. Tarr sent Mr. Meese a draft recusal policy with a list of Mr. and Mrs. Meese's assets compiled from Mr. Meese's January 10, 1985 Financial Disclosure Form 278. The draft recusal policy was presented with a cover memorandum which specifically stated that ". . . this draft assumes that you will have sold the stocks and bonds [to be sold under the January 23, 1985 ethics agreement] before the recusal policy is circulated."

Mr. and Mrs. Meese collected certificates for disposition and delivered them to the brokerage firm of Bear, Stearns & Co. by May 22, 1985. Mr. Meese's San Francisco money manager, W. Franklyn Chinn, sold these securities in market transactions from May 23, 1985 through June 17, 1985.

As described elsewhere in this Report, effective May 23, 1985, a limited partnership, Meese Partners, was formed between Mr. and Mrs. Meese and Financial Management International, Inc. (FMI), Mr. Chinn's firm. The proceeds from the sales of Mr. and Mrs. Meese's securities were transferred by Bear, Stearns & Co. to an account in the name of Meese Partners after that account was opened on July 10, 1985.

The Meese Partners partnership agreement specifically provided that Mr. and Mrs. Meese were not to be aware of the investments made by Mr. Chinn on their behalf.

Mr. Meese therefore characterized this arrangement as a "blind" partnership. However, Mr. Meese did not take steps to qualify his partnership with Mr. Chinn under the qualified blind trust exemption to the Ethics in Government Act.

On May 24, 1985, Mr. Meese sent Mr. Chinn a document entitled "Transfer of Property" which purported to dispose of certain stock holdings of Mr. and Mrs. Meese in the RBOCs. The Meeses were unable to locate their certificates reflecting those holdings when they collected the certificates for transfer to Mr. Chinn in May 1985.

Also, on May 24, 1985, Mr. Meese initialed and circulated a recusal policy to various offices at the Department of Justice pursuant to his commitments to Congress. The recusal policy was accompanied by two other documents -- a list of assets which were reported to have been divested and a list of entities in which Mr. and Mrs. Meese retained interests. Mr. Meese stated that the list of existing assets was being circulated, "[t]o assist you in identifying matters from which I may be disqualified."

The list of entities did not include any of the RBOCs, the Los Angeles Housing Authority, Santa Fe Southern Pacific, Safeway Stores, Inc., Sterling Drug, Inc., First Interstate Bank, Affiliated Fund, Meese Partners or Financial Management International, Inc. Mr. Meese instead reported in the second attachment to the recusal policy that he had divested himself of all his interests in the RBOCs, the Los

Angeles Housing Authority, Santa Fe Southern Pacific, Safeway Stores, Inc., and Sterling Drug, Inc.

Mr. and Mrs. Meese did not in fact dispose of their Los Angeles Housing Authority bond or any shares of Santa Fe Southern Pacific securities in 1985. In addition, they did not sell all their shares in Safeway Stores, Inc. or Sterling Drug Inc. Mr. and Mrs. Meese also had interests in IRA accounts with First Interstate Bank and in a Keogh plan, Affiliated Fund, which were not disclosed in connection with Mr. Meese's recusal policy. Also, as described elsewhere in this Report, Mr. Meese had not disposed of his RBOC securities.

The recusal policy stated that Mr. Meese was specifically recusing himself from a number of matters including:

any matter involving the law firms that represented me in the Independent Counsel's investigation (e. robert wallach, Esq., San Francisco, California and Dickstein, Shapiro and Morin, Washington, D.C.), at least until my liability to those firms for attorneys' fees reported on my SF-278 Financial Disclosure Report has been discharged.

In addition to this commitment and the other specific commitments set out in the recusal policy, Mr. Meese made the general commitment that:

pursuant to 18 U.S.C., Section 208, I will disqualify myself from participation in any matter in which I have a financial interest within the meaning of that statute unless I

obtain a waiver pursuant to Section 208(b). Finally, I will recuse myself from participation in any matter in which, in my judgment, it is desirable for me to do so in order to avoid^{197/} an appearance of impropriety.

On May 28, 1985, the Assistant Attorney General for Administration, W. Lawrence Wallace, informed the Office of Government Ethics that Mr. Meese had fulfilled his ethics agreement and the commitments made during the nomination hearings.

C. Mr. Meese's 1985 and 1986 Financial Disclosure Forms

On June 19, 1986, Mr. Meese completed his financial disclosure form for calendar year 1985. As the last entry on the "Assets and Income" portion of the form, Mr. Meese listed "Financial Management International, Inc. (limited blind partnership)" with assets having a value in the range from \$50,001-\$100,000 and with dividend income during 1985 in the range from \$5,001-\$15,000. In the transaction section of the form, Mr. Meese disclosed a purchase of "Financial Management International, Inc." on May 23, 1985, for a consideration in

^{197/} After circulation of his recusal policy, Mr. Meese looked to a member of his personal staff to be alert to Mr. and Mrs. Meese's financial interests and to call Mr. Meese's attention to any matter which might require recusal when matters came into the Department of Justice. For a brief period of time, this responsibility fell to Senior Special Assistant Stephen Galebach; it thereafter fell to Chief of Staff John R. Richardson.

the range of \$50,000-\$100,000. The 1985 financial disclosure form did not mention Meese Partners.

Mr. Meese explained to Congress that he disclosed the name of "Financial Management International, Inc." rather than Meese Partners because FMI generated the income he received and because he believed that the identification of FMI as the source of his income conveyed more information than would the identification of Meese Partners. Mr. Meese then testified before a Senate subcommittee that "[t]he actual source of my income is Financial Management International, Inc. That is the name on the checks."^{198/}

The transactions section of Mr. Meese's 1985 disclosure form reported, among other transactions, the sale of the Meeses' stock in the RBOCs on May 23, 1985; no disclosure was made concerning the "Transfer Document" and the Meeses' continuing efforts to locate the certificates for these shares.

While Meese Partners had purchased and sold 11 securities during 1985, the Form 278 did not disclose any of those transactions. However, as noted before, the form did not purport to rely upon the "Qualified Diversified Trust"

^{198/} While Mr. Meese received correspondence from FMI, his three checks during the active term of the partnership were not drawn on FMI bank accounts. Two were drawn on accounts of brokers and the third were drawn on an account in the name of Meese Partners with an address "c/o FMI."

exemption with respect to the disclosure of the income reported from FMI.

The 1985 disclosure form also did not disclose Mr. Meese's interests in the two First Interstate Bank IRAs or his Keogh Plan, Affiliated Fund.

After completing his financial disclosure form for 1985, Mr. Meese met with ethics officials at the Department of Justice and answered questions to their apparent satisfaction. Mr. Meese's financial disclosure form was accepted by the appropriate Department of Justice officials and forwarded to the OGE on September 26, 1986. To the extent that the OGE posed questions to Mr. Meese concerning this form, he responded to those questions to its satisfaction.

Mr. Meese submitted his financial disclosure form for calendar year 1986 to Deputy Attorney General Arnold I. Burns on June 15, 1987. That disclosure form was never formally submitted to the OGE by the Department of Justice.

The 1986 Form 278 initially completed by Mr. Meese reported interests in Santa Fe Southern Pacific securities, Los Angeles Housing Authority Bonds, two First Interstate Bank IRA accounts, Affiliated Fund, Safeway Stores securities, and Sterling Drug securities. Mr. Meese again disclosed his relationship with Mr. Chinn as "Financial Management International, Inc. (limited blind partnership)." Once again, the Meeses did not purport to create a "Qualified Diversified Trust." The income of the Meeses from Meese Partners was

disclosed as "partnership income" rather than income from a "Qualified Trust." The 1986 Form 278 did not disclose any of the 11 securities purchases and sales by Meese Partners during 1986. In addition, the 1986 Form 278 did not disclose any continuing interest of Mr. and Mrs. Meese in the RBOCs.

On September 3, 1987, after extensive public discussion of the 1985 financial disclosure form, and after correspondence with the OGE, Mr. Meese submitted amended financial disclosure forms for calendar years 1985 and 1986 that corrected the errors in Mr. Meese's prior filings.

Mr. Meese relied upon the "Transfer of Property" document as the reason for not disclosing an interest in any of the RBOCs. As described in the portion of this Report relating to the RBOCs, the independent counsel concluded that this transfer document was not sufficient to dispose of Mr. Meese's interests in those companies.

Mr. Meese explained the other inaccuracies on his financial disclosure forms as the result of inadvertence. The evidence is consistent with that explanation.

D. Inaccuracies in Mr. Meese's Recusal Policy and Disclosure Form

The deficiencies in the recusal policy circulated by Mr. Meese appear to be inconsistent with the commitments he made in his ethics agreement.

It appears that Mr. Meese did not fully disclose his transactions through Meese Partners on the Form 278s which he

completed for 1985 and 1986. In addition, he did not disclose certain other interests in two IRAs and his Keogh plan on his 1985 Form 278, although he did disclose those interests on his 1986 Form 278. Finally, as more fully described in the portion of the Report relating to Mr. Meese's participation in matters relating to the telecommunications industry, Mr. Meese failed to disclose fully and accurately his continuing interest in, and income from, his telecommunications securities.

The Ethics in Government Act of 1978 requires public officials to report accurately certain financial interests including assets, income and transactions, and also requires that commitments made in ethics agreements be met.^{199/}

The independent counsel has considered the evidence concerning the financial disclosures and related statements of Mr. Meese in connection with his obligations under the Ethics in Government Act of 1978, and has determined that Mr. Meese did not knowingly and willfully fail to fulfill his obligations under the Act. Accordingly, there is no basis for prosecution of Mr. Meese for a violation of 18 U.S.C. § 1001,

^{199/} The Ethics in Government Act provides only for civil enforcement proceedings. Certain false statements made in a document required to be submitted under the Act may be prosecuted as false statements in violation of 18 U.S.C. § 1001. United States v. Hansen, 772 F.2d 940 (D.C. Cir. 1985), cert. denied, 475 U.S. 1045 (1986) (False statements on financial disclosures form resulted in conviction for violation of 18 U.S.C. § 1001).

or any other federal criminal law based upon his financial disclosure filings and other statements made by him pursuant to the Ethics in Government Act of 1978.

II. FINANCIAL RECORDS ANALYSES

The office of independent counsel conducted analyses of the finances of the Meeses, Mr. Wallach, Mr. Chinn and Dr. London in order to ascertain whether or not the financial records of their transactions evidenced a bribe or a gratuity involving Mr. Meese in violation of section 201 of Title 18 of the United States Code.

The specific item financial investigations conducted by five Internal Revenue Service Agents involved analyses of bank records, tax returns and other financial records of Mr. and Mrs. Meese since 1980. Available bank accounts and related records of Mr. Wallach were analyzed on a more limited specific item basis for the period of 1983 to date. The available bank records and related records of Mr. Chinn and Dr. London from 1985 to date also were reviewed for questionable items meriting further attention.

The analyses resulted in conclusive explanations for nearly all of the financial transactions. While some transactions in Mr. and Mrs. Meese's accounts, principally at the beginning of the time period under review, could not be conclusively explained, the investigation produced no evidence of an improvement in the financial condition of the Meeses

that would support a bribery or gratuity theory of prosecution.

The analyses of the transactions involving the available accounts of Mr. Wallach, Mr. Chinn and Dr. London revealed no evidence of any direct or indirect payment received by Mr. Meese in violation of federal law. However, because of the significant gaps in the financial information relating to Mr. Wallach, Mr. Chinn and Dr. London, the nature of certain transactions, and the refusal by each of those individuals to cooperate fully with this investigation, there are unanswered questions with respect to transactions not documented by available records. In light of the conclusive analysis of the financial records of Mr. and Mrs. Meese, the independent counsel has determined that these questions do not merit further attention.

The analysis of the financial affairs of Mr. Meese did not disclose any evidence of a violation by him of 18 U.S.C. § 201. However, information was obtained during the course of that analysis that raised a question whether or not certain provisions of the Internal Revenue Code were violated by Mr. and Mrs. Meese when they filed their 1985 personal income tax return. That subject is discussed in Part Four of this Report.

A. Specific Item Analysis of the Personal Transactions of Mr. and Mrs. Edwin Meese III

In response to a grand jury subpoena, Mr. Meese produced financial records from 1981 to the date of the

request. The records produced included income tax records, bank records, investment records, insurance records, property records, credit card records and gift records. The grand jury also obtained the portions of the records from Independent Counsel Jacob A. Stein's investigation that related to the Meeses' financial affairs and the work papers and other records in the possession of the accountants who have provided tax preparation services to the Meeses since 1981. Specific requests were made on behalf of the grand jury to banks and other financial institutions in order to close the gaps in those financial records. Finally, with the Meeses' consent, the Internal Revenue Service provided access to its records concerning the Meeses.

The financial records obtained by the independent counsel were analyzed by agents of the Internal Revenue Service. A computerized data base reflecting the bank transactions was assembled and organized on printed schedules to evaluate the completeness of the financial records. In the course of the preparation of the data base, Internal Revenue Service agents conducted a specific item analysis of the Meeses' financial transactions: The purpose of the analysis was to determine whether or not any financial transaction revealed any possibility of direct or indirect compensation to the Meeses that merited further investigation.

This specific item financial analysis is unusually complete because of the meticulous manner in which Mr. Meese

maintained his financial records. Mr. Meese kept careful track of income and expenses through the maintenance of a color coded check register. He recorded the source of each deposit in parenthetical notes on his check register. It was Mr. Meese's practice, when depositing a check to his account, to record on the deposit slip the American Banking Association number of the bank on which the check was drawn. The check registers showed that Mr. Meese meticulously balanced his checkbook on separate schedules which he prepared each month. According to the investigating agent principally in charge of this analysis, the records kept by Mr. Meese are the most careful and thorough records which he has reviewed in his sixteen years with the Internal Revenue Service.

Mr. Meese and Mrs. Meese have each had individual bank accounts since 1980. Although some of the bank accounts and other financial institution accounts maintained by the Meeses since 1980 were owned jointly, Mr. Meese managed some accounts while Mrs. Meese managed others. The large majority of the deposit items that could not be conclusively explained by the financial analysis were found in the records for the accounts maintained by Mrs. Meese.

The specific item financial analysis focused on deposits to the accounts used by the Meeses. Conclusive explanations were obtained for the large majority of the deposits to the accounts of the Meeses from 1981 through 1986. A number of the other deposits are likely subject to

explanations that cannot be conclusively demonstrated. Of these unexplained items, only four, all deposited in the first seven months of 1981, were over \$2,000. Those four large items were deposited at a time when Mr. Meese was receiving expense reimbursements and compensation in connection with the 1980 Presidential Campaign. It is likely that these items represent such income or reimbursed expenses. The other, smaller unexplained items similarly are not suspicious in character; for the most part, they consist of a large number of small deposits to accounts managed by Mrs. Meese.

The independent counsel has determined that the currently unexplained deposits do not merit further analysis on these facts because the Meeses' known sources of legitimate income in the years under review exceeded their known deposits. The bank records analysis did not result in any indication that the Meeses used cash, money orders, or any arrangement other than their bank accounts to conduct their personal financial affairs. Each unexplained deposit to an account of the Meeses presently appears likely to be a deposit of a reported income item which simply cannot be connected to a known income source.

In addition, the unidentified deposits do not merit further analysis in light of their number, size and nature. The unexplained deposits for each year include a large number of very small items, most of which were under \$100. Although those items cannot be conclusively explained, their pattern in

the context of the Meeses' affairs strongly implies that they represented reimbursements from friends, dividends from stock, travel expense reimbursements, and similar items that do not merit further investigation.

The analysis did not reveal any unexplained payments from Mr. Wallach. The only financial transactions involving Mr. Chinn were withdrawals from Meese Partners. The specific item analysis revealed no evidence of any transaction between the Meeses and Dr. London or anyone connected with the Wedtech Corporation, the Wedtech Corporation itself, Bruce Rappaport, or any of Mr. Rappaport's companies.

B. Specific Item Analysis of Mr. Wallach's Financial Records

The independent counsel also sought financial records of Mr. Wallach in order to conduct a specific item analysis to determine whether there was any cash payment or other transfer of a valuable asset from Mr. Wallach to Mr. Meese. These records were sought by the federal grand jury in the District of Columbia at the same time that financial records were being sought by a grand jury in the Southern District of New York. In response to those subpoenas, Mr. Wallach produced documents to both grand juries. The office of independent counsel reviewed all records obtained from Mr. Wallach in conjunction with the United States Attorney for the Southern District of New York.

After it was determined that gaps existed in the financial records produced by Mr. Wallach, he appeared before the District of Columbia grand jury on November 10, 1987, in response to a subpoena which called for the production of the missing documents. At this appearance,

[GRAND JURY MATERIAL DELETED]

the office of independent counsel has been unable to obtain an explanation for the incomplete financial records of Mr. Wallach.

The office of independent counsel was able to obtain documents and information from a law firm which performed both legal and accounting services for Mr. Wallach. In addition, the office of independent counsel obtained specific financial records relating to Mr. Wallach from banks and other third parties. Nevertheless, the specific item financial analysis with respect to Mr. Wallach has been limited as a result of Mr. Wallach's assertion of his constitutional privilege and his refusal to cooperate fully with the office of independent counsel.

The specific item analysis conducted with respect to Mr. Wallach's financial records began with his first receipt of compensation from Wedtech in 1983 and continued into 1987. Information concerning the compensation paid by Wedtech to Mr. Wallach was obtained from Wedtech records and cooperating Wedtech officers. The compensation from Wedtech to Mr. Wallach is set out in detail in the portion of this Report on the relationship between Mr. Wallach and Wedtech. The evidence shows that Mr. Wallach was paid \$675,000 or more by Wedtech, received 45,000 shares of Wedtech stock later sold for at least \$480,000, received additional stock options from Wedtech, and received referral fees, related to Wedtech, from the law firm of Squadron, Ellenoff, Plesent & Lehrer totaling at least \$227,000. In addition, he is alleged to have received \$200,000 from Mr. Chinn and Dr. London in connection with a January 23, 1986 securities offering by Wedtech.

An analysis of Mr. Wallach's bank accounts was conducted in order to ascertain whether there were additional deposits made to Mr. Wallach's accounts from Wedtech or from any unusual source. The funds obtained from Wedtech and deposited in Mr. Wallach's accounts were traced to the full extent practicable in order to determine whether Mr. Wallach made any payment to Mr. Meese or any unusual transfer from funds originating with Wedtech.

The analysis of the records of deposits to Mr. Wallach's accounts identified 99 percent of those deposits

and provided an explanation of the large majority of identified items. The total unexplained deposit items over a period of six years amounted to \$97,617.07. However, \$85,050 of this total resulted from deposits to one account in 1987. There are indications that at least \$42,600 of that amount involved transfers between different accounts used by Mr. Wallach.

A number of potentially significant items were noted in the course of the specific item investigation of Mr. Wallach's financial affairs. The bulk of those items, relating to money passing from Wedtech, Mr. Chinn or Dr. London to Mr. Wallach, had already been identified to the office of independent counsel. Practicable steps are not available to the office of independent counsel at this time to obtain an explanation for any unexplained significant deposit to Mr. Wallach's accounts.

It appears from the financial transactions records reviewed in the course of this investigation that the business and personal financial transactions of Mr. Wallach were for the most part conducted in a straightforward manner. Notable exceptions occurred when Mr. Wallach received \$300,000 from Wedtech in 1984, when Mr. Wallach allegedly received Wedtech compensation in 1985 by way of payments totaling \$100,000 to a company controlled by Dr. London, when Mr. Rappaport sent \$150,000 intended for Mr. Wallach to Mr. Chinn in August 1985,

and when Mr. Wallach received expense reimbursements from Mr. Rappaport in 1985 and 1986.

The specific item financial analysis of the records of Mr. Wallach revealed no evidence of any transfer of funds or any thing of value from Mr. Wallach to Mr. Meese in violation of 18 U.S.C. § 201. A number of small items remain unexplained; however, they cannot be pursued at this time in light of the criminal charges pending against Mr. Wallach and his refusal to cooperate with the office of independent counsel.

C. Analysis of Financial Records of Wayne Franklyn Chinn and Rusty Kent London

In conjunction with the United States Attorney for the Southern District of New York, the independent counsel also obtained bank records and investment records relating to Mr. Chinn, Dr. London and their known businesses, Financial Management International, Inc. (FMI), International Financial Consulting and Investments, Inc. (IFCI), and National Consulting Management, Inc. Those records were analyzed in an effort to review the disposition of funds obtained by those individuals and businesses from Wedtech in order to ascertain whether or not those records contained evidence that funds were passed on to Mr. Meese.

The ability of investigators to conduct a conclusive review of the records of Mr. Chinn and Dr. London was limited by the complex nature of their transactions as well as by the

unavailability of Mr. Chinn and Dr. London as witnesses in this investigation. Mr. Chinn and Dr. London engaged in a large number of transactions during 1985 and 1986 involving a number of identified accounts and large sums of money. In light of the assertions by Mr. Chinn and Dr. London of their constitutional privileges not to be compelled to be witnesses against themselves, the office of independent counsel was unable to verify that it had assembled sufficient records for a conclusive analysis.

The portion of this Report which describes the relationship between the Wedtech Corporation, Mr. Chinn and Dr. London explains their initial arrangement for compensation through stock options. It also recounts their receipt of \$1,140,000 in connection with a Wedtech securities offering in January 1986 as well as their receipt of at least \$920,000 from Wedtech officers over the course of their association. In addition, they received at least \$270,000 in expense reimbursements from Wedtech.

The review of the records which were obtained by the office of independent counsel focused on the compensation and expenses paid to Dr. London's company, IFCI, in January 1986, at the close of the Wedtech securities offering. On January 29, 1986, Wedtech paid IFCI \$1 million in compensation for services. Thereafter, in July 1986, Wedtech paid an additional \$140,000 to IFCI for expenses.

Mr. Wallach, Mr. Chinn and Dr. London had lunch with Mr. Meese at the Justice Department on the day of the \$1 million payment. Bank accounts used by Dr. London and IFCI in 1986 were examined in order to determine whether any portion of that sum was passed on to Mr. Meese. There is no evidence of any such transfer.

In addition, the financial records obtained for Mr. Chinn and Dr. London were reviewed for any indication of a direct or indirect payment to Mr. Meese. Inasmuch as Mr. Chinn and Dr. London constantly moved funds between their own accounts and between each other, it was not possible to identify with any degree of certainty the ultimate disposition of the compensation received by them from Wedtech. An analysis of the identified accounts was therefore conducted in order to determine whether, once funds were commingled in their accounts, other funds may have been withdrawn for the purpose of compensating Mr. Meese. There is no evidence of such a withdrawal of funds.

A number of unexplained payments were identified in the course of the analyses of the records of Mr. Chinn and Dr. London, some of which involved transfers of money to accounts outside the United States. The unexplained items do not merit further attention in the context of this investigation. The review of the specific items withdrawn from the accounts of Mr. Chinn and Dr. London also did not result in any evidence of any payment to, or for the benefit of,

Mr. Meese. In light of the pending criminal charges against Mr. Chinn and Dr. London, and their refusal to cooperate with the office of independent counsel, the absence of any other evidence of a direct or indirect payment to Mr. Meese and the limited mandate of the independent counsel, the independent counsel determined not to explore further the transactions of Mr. Chinn and Dr. London.

D. Other Transactions Outside the Scope of Financial Analyses

In the course of the investigations by the office of independent counsel and the United States Attorney for the Southern District of New York of the financial transactions of Mr. Wallach, Mr. Chinn and Dr. London, evidence was developed of cash transactions^{200/} and offshore transactions.^{201/} The

^{200/} The office of independent counsel has obtained evidence that on at least three occasions Mr. Chinn obtained or used a large sum of cash to complete an undocumented transaction. Dr. London was involved in one of these incidents, that is, the payment of \$100,000 in cash to then Wedtech President Anthony Guariglia. That payment is described in the portion of this Report concerning the relationships between Mr. Wallach, Mr. Chinn, Dr. London and Wedtech. The independent counsel has found no indication that any of that cash was paid directly or indirectly to Mr. Meese.

^{201/} Mr. Wallach, Mr. Chinn and Dr. London traveled extensively outside the United States during 1985, 1986 and 1987. In addition, they are known to have engaged in transactions originating outside the United States. The offshore accounts apparently maintained by Mr. Chinn in Hong Kong and London are described in the portion of this Report relating to the investment relationship between Mr. Chinn and Mr. Meese. The office of independent counsel has benefited

(Footnote Continued)

financial analyses conducted by the office of independent counsel necessarily have been limited to those accounts and transactions in the United States which were documented by financial records accessible to the office of independent counsel. The independent counsel has found no evidence to indicate that undocumented transactions in the United States or any offshore transactions were used to provide any direct or indirect benefit to Mr. Meese.

E. Conclusions From Specific Item Analyses

As noted above, the specific item financial analyses conducted by the office of independent counsel were restricted to an examination of the records of transactions available to investigators in the United States. Although the office of independent counsel did not have access to all of the evidence concerning the financial transactions engaged in by Mr. Wallach, Mr. Chinn or Dr. London, the specific item analysis of the financial affairs of Mr. and Mrs. Meese did not reflect directly or indirectly any substantial cash

(Footnote Continued)

from the full cooperation of the Hong Kong authorities.

There is also evidence that Mr. Chinn and Dr. London had access to bank accounts in banking havens including Switzerland, the Grand Caymans and Liechtenstein.

deposits or receipt of any substantial assets from an unknown source.

Accordingly, the independent counsel has determined from the currently available evidence that there is no basis for concluding that any funds or other thing of value were illegally received by Mr. Meese from Messrs. Wallach, Chinn or London.

III. BENEFITS GIVEN AND RECEIVED BY MR. MEESE AND MR. WALLACH

The May 11, 1987 referral from the Department of Justice requested that the independent counsel investigate, among other matters, whether 18 U.S.C. §§ 201-211 or any other provision of federal criminal law was violated by Mr. Meese's relationships with E. Robert Wallach from 1981 to the present.

The evidence shows that, during the relevant period of time, Mr. Wallach engaged in a number of activities which were of substantial benefit to Mr. Meese. Most of those activities have been described in detail in other portions of this Report, and will be discussed only briefly in this section.

The evidence also shows that during the same period Mr. Meese, in his capacity as Attorney General of the United States, performed certain official acts which were of substantial benefit to Mr. Wallach. A number of those acts are discussed elsewhere in detail, and will be referred to briefly; others are set forth in this section of the Report.

The independent counsel investigated the question whether, as a result of those activities, Mr. Meese violated either the bribery provision or the gratuity provision of 18 U.S.C. §§ 201(b), 201(g) and 211.

The investigation, among other matters, covered the longstanding personal friendship and close relationship between Mr. Meese and Mr. Wallach to determine whether their various actions can be attributed to that personal relationship.

The independent counsel has determined, as a result of an investigation of these matters, that there is insufficient evidence to conclude that Mr. Meese engaged in conduct in violation of 18 U.S.C. § 201 or § 211.

A. Mr. Meese's Longstanding Friendship with Mr. Wallach and Mr. Wallach's Role of Adviser to Mr. Meese

Mr. Meese and Mr. Wallach met in 1956 when Mr. Meese returned to law school after a period in the armed forces, and joined Mr. Wallach's class at the University of California, Berkeley, California. Ever since, as noted elsewhere in this Report, Mr. Meese and Mr. Wallach have maintained a close personal relationship.

Immediately following the inauguration of President Reagan, Mr. Meese assumed the position of Counselor to the

President at the White House. On January 21, 1981, Mr. Wallach wrote to Mr. Meese concerning candidates for a number of positions in the new administration. Mr. Wallach also commented on statements by a mutual friend that he, Mr. Wallach, might be "letting you [Mr. Meese] down," and the fact that "you [Mr. Meese] needed friends in Washington." Mr. Wallach then expressed his willingness "to serve in a public capacity," in part, because "I am your friend and would not interpret as an abuse of friendship any request you felt appropriate[sic] to make."

As described elsewhere in this Report, this letter was followed by a steady stream of letters and memoranda from Mr. Wallach to Mr. Meese on personal matters, general questions of national policy, foreign affairs, and numerous other matters. Mr. Wallach's correspondence was usually sent to Mr. Meese at the White House and at his residence.

In an October 26, 1981 letter to Mr. Meese, Mr. Wallach referred to his increasing financial and personal independence. He expressed an inclination to dissolve his law partnership in San Francisco in order to have more time for east coast activities. He spelled out expressly his anticipated relationship to Mr. Meese:

My own vision is of an intensive support role, low-profile but significant, drawing upon my talents for organization and leadership to accomplish tasks, and my rather extensive, if sometimes superficial, range of knowledge; particularly in the world of foreign affairs, which has drawn my interest

since high school. We spoke once before of long-range planning, as well as capacity to provide rapid assistance for the matters of immediate concern.

Mr. Wallach described to the independent counsel a conversation with Mr. Meese in or about April 1982, over a dinner in Washington, D.C., when Mr. Meese "came as close as Ed Meese can come to asking if I could spend anymore time in Washington than I was. I said I would try to do that. . . . And I did. I moved, I took a furnished apartment in Washington in May of 1982." According to Mr. Wallach, he took a "sabbatical" from his law partnership, and

With that [sabbatical arrangement with his partner] in mind, I took this rented, furnished apartment and thought I would spend approximately a week to ten days in Washington and then go back to San Francisco, take care of my practice for two to three weeks and come back to Washington as the demands dictated.

B. Actions of Mr. Wallach which Benefited Mr. Meese

As set forth in other portions of this Report, Mr. Wallach focused his activity on Washington, D.C. during the period when Mr. Meese was Counselor to the President, and also for a substantial period following Mr. Meese's appointment as Attorney General of the United States.

During that time, Mr. Wallach engaged in various actions that were of substantial benefit to Mr. Meese. This Report already has discussed Mr. Wallach's introduction of

Mr. Meese to Mr. Chinn, who thereafter rendered valuable money management services for Mr. Meese. The evidence shows that Mr. Chinn undertook those services as a favor to Mr. Wallach. Also previously discussed are the persistent efforts of Mr. Wallach to obtain a paying job for Mrs. Meese, which successfully culminated in Mrs. Meese's obtaining a \$40,000-per-year job with the National Capital Chapter of the National Multiple Sclerosis Society.

1. Legal Representation of Mr. Meese by Mr. Wallach

An additional service rendered by Mr. Wallach to Mr. Meese was his performance of legal services, without charge, for Mr. Meese in connection with his nomination and confirmation hearings. Mr. Wallach also represented Mr. Meese in connection with the investigation of Mr. Meese by Independent Counsel Jacob A. Stein, for which he accepted a court-awarded fee that was substantially less than the amount of his request.^{202/}

Mr. Meese was represented during Independent Counsel Stein's investigation jointly by Mr. Wallach and by the law firm of Dickstein, Shapiro & Morin (Dickstein, Shapiro). Leonard Garment of Dickstein, Shapiro was lead counsel.

^{202/} The circumstances giving rise to the legal representation of Mr. Meese by Mr. Wallach are set forth in Part One of this Report.

Dickstein, Shapiro's representation was pursuant to a fee agreement that was substantially identical to the agreement between Mr. Meese and Mr. Wallach. Mr. Meese was responsible for paying fees and expenses at usual and customary rates, subject to forgiveness if there was a court-awarded fee under the independent counsel statute that did not substantially deny reimbursement. The relevant text of the fee agreement between Mr. Meese and Mr. Wallach is included in the margin.^{203/}

Mr. Meese testified before the grand jury to his understanding that he was obligated to pay the legal fees and

203/ The fee agreement stated, in part:

This letter will confirm our understanding regarding legal services rendered and to be rendered by me on your behalf. My engagement involves representation in connection with the investigation by Independent Counsel commenced April 2, 1984 pursuant to provisions of the Ethics in Government Act.

Fees for legal services rendered during the engagement will accrue at my usual hourly rates. In addition, actual out-of-pocket expenses reimbursable to me will accrue as incurred for necessary services, including such matters as travel, long-distance telephone calls, local transportation and the like.

It is contemplated that if the conditions of section 593(g) of the Ethics in Government Act are satisfied, I will request the appropriate Division of the United States Court of Appeals for the District of Columbia Circuit to award reimbursement for fees and expenses incurred during this engagement. If, however, such conditions are not met or if having been met, the Court nonetheless were substantially to deny payment thereunder, I will render my bill to you for my services.

expenses if the Court substantially denied reimbursement by the United States, or if Mr. Meese failed to qualify for such reimbursement. Mr. Garment told investigators that his firm never considered that Mr. Meese would be released from his obligation to pay fees and expenses if the court award was not forthcoming or was inadequate. Mr. Garment further stated that he was satisfied that Mr. Meese fully understood his responsibility to pay fees and expenses.

After Independent Counsel Stein's report was issued on September 20, 1984, Mr. Wallach continued to represent Mr. Meese in his confirmation hearings before the Senate without charging a fee, as he had done from January 1984 through March 1984 during the nomination hearings which preceded the appointment of the independent counsel. Those hearings recommenced on January 29, 1985. Mr. Meese was confirmed as Attorney General on February 23, 1985.

Independent Counsel Stein's investigation did not result in any indictment. On December 17, 1984, Dickstein, Shapiro and Mr. Wallach submitted a joint application to the Court for reimbursement of fees and expenses. Mr. Wallach sought reimbursement totaling \$142,562.50; Dickstein, Shapiro sought reimbursement totaling \$578,361.99. After supplemental proceedings in which the applicants were required to provide additional substantiation for their requests, the Court, on June 7, 1985, entered an order granting Mr. Wallach \$76,870.00, which was approximately 54 percent of his initial

request, and granting Dickstein, Shapiro \$395,320.00, which was approximately 68 percent of its initial request.

Mr. Wallach and Dickstein, Shapiro publicly announced that they regarded this award as substantial compensation.

Mr. Meese testified before the grand jury to his understanding that, while the legal fee question remained unresolved by the Court, he might owe substantial legal fees to Mr. Wallach. Mr. Meese also testified that it was his understanding that both Mr. Wallach and Dickstein, Shapiro were willing to accept the court awards in full satisfaction of the fees and expenses owed by Mr. Meese.

The court-awarded reimbursement was not paid to Mr. Wallach and Dickstein, Shapiro until October 1985. On November 19, 1985, Dickstein, Shapiro sent Mr. Meese its final invoice for services rendered, which stated that the court award of reimbursement was accepted by the firm in full satisfaction of all amounts owed by Mr. Meese.

2. Mr. Wallach and Mr. Chinn Assist the Meeses in Obtaining Loans from the National Bank of Commerce

a. 1983 National Bank of Commerce Loan for \$80,000

In September 1983, Mr. and Mrs. Meese owed \$80,000 on a personal loan arranged through their accountant, John R. McKean. They had obtained this loan in 1981 in order to purchase a home in McLean, Virginia, at the time they were trying to sell a home in La Mesa, California. The Meeses were

unable to repay the loan arranged by Mr. McKean after the sale of their La Mesa home in September 1982. Their McLean, Virginia, home was then subject to a first mortgage of \$150,000.

By September 1983, Mr. Wallach had a social and business relationship with Jeffrey N. Cohen, Chairman of the Board of Directors of the National Bank of Commerce and owner of 45 percent of the bank's stock. Mr. Wallach had previously invested in at least one real-estate partnership with Mr. Cohen. Mr. Wallach and Mr. Cohen also socialized regularly.

According to Mr. Cohen, Mr. Wallach telephoned him on a Wednesday in September 1983, and informed him that Mr. Meese needed to borrow \$80,000. Mr. Wallach told Mr. Cohen of publicity concerning an \$80,000 loan to Mr. Meese which Mr. Meese desired to refinance. Mr. Cohen recalled that Mr. Wallach told him of Mr. Meese's need to obtain this loan quickly. Mr. Cohen stated to the office of independent counsel that he was willing to support a loan by his bank to Mr. Meese because of Mr. Meese's position as Counselor to the President. Mr. Cohen immediately put Michael Sullivan, the president of the bank, in touch with Mr. Meese.

Mr. Meese's records reflected that he received a telephone call from Mr. Wallach on Wednesday, September 14, 1983, during which Mr. Wallach left instructions for Mr. Meese's preparation of a letter to Mr. Cohen. By a letter

dated September 14, 1983, Mr. Meese applied for an \$80,000 loan from the National Bank of Commerce. Mr. Cohen recalled that his bank was able to provide Mr. Meese with an unsecured loan and a check for \$80,000 that very day, with the understanding that it would be converted to a secured loan as soon as the necessary paperwork was completed. The evidence is consistent with the conclusion that this loan was at terms and a rate of interest customary for such a loan by the bank at that time.^{204/}

The loan was later secured by a second mortgage on the Meeses' home in McLean, Virginia. Mr. Cohen recalled that there were difficulties in completing the paperwork necessary to convert the loan to a secured loan. According to Mr. Cohen, he had to contact Mr. Wallach once or twice in February 1984 in order to remind Mr. Meese to complete the necessary papers. The conversion to a secured loan was completed in or about March 1984.

^{204/} Mr. Wallach thereafter referred to this incident when he endeavored to convince Wedtech to do business with Mr. Cohen. On December 1, 1983, Mr. Wallach wrote to Wedtech Executive Vice-President Mario Moreno, and suggested that Wedtech deposit "significant funds" with the National Bank of Commerce, stating that the matter was "of some importance to me as a matter of friendship and credibility." In his letter, Mr. Wallach also indicated that Mr. Cohen "has also been a good friend to Ed Meese." Wedtech never made the requested deposit.

b. 1986 Refinancing of The Meeses' Mortgage Through A \$260,000 Loan from the National Bank of Washington

On January 29, 1986, Mr. Meese discussed with Messrs. Wallach, Chinn and London at a lunch in Washington, D.C., his desire to refinance his mortgage in order to take advantage of lower interest rates. On February 5, 1986, Mr. Wallach wrote to Mr. Chinn and Dr. London "Re: EM House Mortgage." In this letter, Mr. Wallach asked:

If you could combine your talents, in synergy with Jeff's to accomplish the replacement of this loan at your earliest possible convenience, consistent with your already overloaded schedules.

While Ed has indicated that it can await my return, I would hope to relieve them of any financial responsibility to which they need not be subjected at as early a date as possible.

For reasons of Washington alone, it would be best if the new mortgage were held by an entity completely unrelated to any of us and at a rate and under terms which are consistent with those that would be offered to any "good customer."

It is my understanding from talking with Jeff that he has accomplished this through the National Bank of Washington.

Mr. Wallach sent copies of the letter to Mr. Meese and Mr. Cohen. Mr. Meese recalled receiving the letter, but did not remember specifically discussing it with Mr. Wallach, Mr. Chinn or Dr. London. Mr. Meese understood the letter to

be a follow-up of the January 29, 1986 luncheon discussion concerning the refinancing of the Meeses' mortgage.

Mr. Cohen recalled being asked by Mr. Wallach for help with the refinancing of the Meeses' mortgage. According to Mr. Cohen, he referred Mr. Wallach to the National Bank of Washington because Mr. Cohen's bank did not make long-term loans, such as mortgage loans. Mr. Cohen then called an officer at the National Bank of Washington, and presented the matter to him.

On February 13, 1986, an assistant vice president of the National Bank of Washington forwarded a loan application to Mr. Meese in care of Mr. Chinn. On February 20, 1985, Mr. Chinn's office telephoned Mr. Meese at his office and informed him that the loan application was on its way. That day, the loan application forms were sent to Mr. and Mrs. Meese by one of Mr. Chinn's employees. Mr. Cohen recalled receiving a telephone call from Mr. Chinn about the Meeses loan application, but does not remember the substance of the call.

Mr. and Mrs. Meese received a \$260,000 mortgage loan from the National Bank of Washington on or about July 2, 1986. The evidence obtained by the office of independent counsel does not demonstrate that Mr. Meese received a preferential interest rate or other preferential terms on this loan. The interest rate and terms are believed to reflect the usual and customary practice of the bank for a mortgage loan of this size.

**3. Miscellaneous Services and Payments
From Mr. Wallach to Mr. Meese**

During the relevant period, Mr. Wallach entertained Mr. and Mrs. Meese, paid certain of their personal expenses, and did other favors for them. These miscellaneous and unrelated actions by Mr. Wallach are set forth below:

(1) In 1981, Mr. Wallach paid Mr. Meese's California bar dues when he let his membership lapse. Mr. Meese immediately reimbursed Mr. Wallach for that \$413 expenditure.

(2) Two checks made payable to Mrs. Meese from Mr. Wallach have been identified. One check for \$2,000 dated December 17, 1983, bears the notation "for Victoria's expenses." Mr. Wallach and Mr. Meese testified that this check represented a repayment of expenses advanced by Mrs. Meese for a longstanding friend of Mr. Wallach's. The second check for \$250, dated June 4, 1986, was explained to the independent counsel as a payment for Mr. Wallach's share of the cost of a photographer hired by Mrs. Meese and Mr. Wallach to photograph a function honoring Mr. Meese.

(3) Mr. Wallach wrote a check to the law firm of Feldman, Waldman & Klein on June 30, 1986, for \$457.50. Mr. Wallach used office space at that firm in 1986, and was identified as "trial counsel" to the firm. The check bears the notation, "Legal services re: Meese." The firm informed the office of independent counsel that this check represented

full payment for services rendered to Mr. Meese through Mr. Wallach in May 1984 during the investigation by Independent Counsel Jacob A. Stein.

(4) Although the calendars of Mr. Meese and of Mr. Wallach reflected numerous occasions when they were together for a meal or other activity, Mr. Wallach's check registers and credit card records reflected only approximately fourteen occasions over four years when he appears to have paid for a meal or other event attended by Mr. Meese or Mrs. Meese, or both.^{205/}

(5) Mr. Meese remembered that Mr. Wallach gave him a painting of an eagle in remembrance of his son. Mr. Wallach's records showed that Mr. Wallach paid \$1,800 for this painting. From the review of Mr. Wallach's financial records, the independent counsel has determined that there may have been as many as four other items provided by Mr. Wallach to the Meeses with an approximate value of \$1,350. Mr. and Mrs. Meese believed that the large majority or all of those items were not, in fact, for them. The evidence developed by the independent counsel indicated that, at most, gifts or services were provided by Mr. Wallach to Mr. and Mrs. Meese on five or more instances over six years with a total aggregate value of \$3,150.

^{205/} The total cost of those identified expenditures, including the cost of each meal for Mr. Wallach and for any other person in attendance, was \$1,562.59.

(6) The independent counsel also obtained evidence that Mr. Wallach paid for or participated in parties and functions given in honor of Mr. Meese. Mr. Wallach's records reflected that, on October 11 1983, he apparently bought a \$300 table at a luncheon in Mr. Meese's honor by "Government Executive." Mr. Wallach hosted a birthday lunch for Mr. Meese at the International Club on December 2, 1983. On March 25, 1985, Mr. Wallach paid for a "Victory Party" at a Washington D.C. restaurant in celebration for Mr. Meese's confirmation as Attorney General, which was paid for by Mr. Wallach's check for \$1,894.50.

(7) Mr. Wallach participated in the arrangement of a trip to Israel for the Meeses in May 1986, which was paid for by the American Friends of Tel Aviv University. Mr. Wallach accompanied Mr. and Mrs. Meese. On that occasion, a grove of trees was dedicated to the memory of Mr. Meese's son. Mr. Wallach had contributed between \$2,000 and \$5,000 towards the cost of the grove of trees as a contribution to the Jewish National Federation.

C. Actions of Mr. Meese Which Benefited Mr. Wallach

During the same period of time that Mr. Wallach engaged in activities that may have substantially benefited Mr. Meese, Mr. Meese performed certain official acts in his capacity as Attorney General that substantially benefited Mr. Wallach.

The beneficial acts that have been discussed in detail in other sections of this Report, and that directly or indirectly benefited Mr. Wallach, include the assistance provided by Mr. Meese and his White House office in connection with Welbilt's efforts to obtain the small engine contract; the intercession of Mr. Meese with Secretary Baldrige at a critical time when Welbilt was attempting to persuade the EDA to subordinate its interests to the interests of Bank Leumi; and the furtherance of Mr. Wallach's commercial venture involving the proposed Aqaba pipeline project. Additional official acts performed by Mr. Meese are discussed in detail below.^{206/}

1. **Mr. Meese Arranges for the Appointment
Of Mr. Wallach to the United States
Advisory Commission on Public Diplomacy**

As already described, Mr. Wallach began communicating with Mr. Meese concerning his willingness to move from San Francisco to Washington, D.C., and take a position in the government at the beginning of the Reagan Administration. At that time, Mr. Meese remembered discussions concerning:

^{206/} Mr. Meese also returned Mr. Wallach's hospitality. Documents obtained from the Department of Justice showed that Mr. Wallach, on at least 18 occasions in 1985 and 1986, had meals with Mr. Meese in the Attorney General's dining room, which were paid for from public funds available to pay for the guests of the Attorney General. White House records reflected that, on 66 occasions from 1983 to early 1985, Mr. Wallach had meals which were paid for from public funds available to pay for meals of White House guests.

whether he [Mr. Wallach] would be able financially to take a position in the Administration, whether there was any suitable position in the Administration, or that it was likely that he would be appointed inasmuch as he had not participated in the campaign and was a member of the opposite political party.

Early in 1982, the Administration was endeavoring to fill positions on a bipartisan committee, the United States Advisory Commission on Public Diplomacy (USACPD). The USACPD describes itself in publicly distributed descriptive materials as:

an independent, bipartisan body created by Congress to oversee the international information and educational exchange programs of the United States Government.

The Commission is responsible for assessing the policies and programs of the U.S. Information Agency. . .

According to Mr. Meese's grand jury testimony:

[I]t just seemed to be a natural way in which Mr. Wallach could serve the Administration as one of the Democrat members of that commission. So I recommended him for that particular appointment.

Mr. Meese was a member of the White House Senior Staff Personnel Committee from January 1981 through 1982. In late 1981 or early 1982, Mr. Meese telephoned Edwin J. Feulner, Jr., the Chairman of USACPD, and suggested that Mr. Wallach was "somebody he should get to know as a possible nominee." White House records reflected that, by March 23,

1982, Mr. Wallach's resume had been sent to J. Michael Farrell of the White House Office of Presidential Personnel.

On April 14, 1982, Mr. Farrell recommended to the White House Senior Staff Personnel Committee the appointment of Mr. Wallach to the USACPD, on the recommendation of Mr. Meese. A memorandum to the President recommending the nomination of Mr. Wallach for this position was prepared on April 22, 1982. The clearances and certifications for Mr. Wallach's appointment were completed by September 8, 1982.

Mr. Wallach's nomination to be a member of the USACPD was announced by the President on November 9, 1982, and transmitted to the Senate on November 15, 1982. Mr. Wallach thanked President Reagan for his nomination by a letter dated November 12, 1982, in which he acknowledged "that my good fortune is entirely attributable to the advocacy of Ed Meese." The Senate confirmed Mr. Wallach's appointment to the USACPD on December 10, 1982, and he was sworn in on January 22, 1983. At some time thereafter, Mr. Wallach was designated the Vice-Chairman of the USACPD.

Mr. Wallach's term of appointment on the USACPD expired on July 1, 1985. On August 9, 1985, President Reagan announced the renomination of Mr. Wallach for a second term on the USACPD through July 1, 1988. Mr. Wallach was thereafter reappointed for a second term. He resigned in January 1988.

2. Mr. Wallach Is Appointed to the United Nations Human Rights Commission

In the fall of 1985, Mr. Wallach was recommended to Ambassador Alan L. Keyes for the position of the United States Representative to the Human Rights Commission of the Economic and Social Council of the United Nations (Human Rights Commission). The recommendation was made by Mr. Garment during a casual conversation at a reception. Ambassador Keyes was the Assistant Secretary of State for the Bureau of International Organizations, with responsibility for United Nations matters. The current Representative, Ambassador Richard Schifter, had just been named the Assistant Secretary for Human Rights. Mr. Wallach recalled that he was contacted by Ambassador Keyes, who asked if Mr. Wallach would be interested in the position. Mr. Wallach, in turn, contacted Mr. Meese and discussed the matter with him.

According to Mr. Meese, during his testimony before the grand jury, he did not initiate the idea that Mr. Wallach might serve the Administration by taking a position with the Human Rights Commission. In fact, Mr. Meese recalled that, based on Mrs. Meese's prior experience with a United Nations commission, he suggested to Mr. Wallach that service on the Human Rights Commission "probably was not a good way for him to serve, that that might not be the best use of his talents." Mr. Meese stated that, when Mr. Wallach "indicated that he wanted to seek this appointment, I did assist by making -- I had conversations and phone calls with him over a period of

time, and I also made calls on his behalf, I believe, to the State Department and to the Office of Presidential Personnel."

While Mr. Wallach was seeking the position, a question was raised by Ambassador Schifter whether he should stay in the position, and also serve as an Assistant Secretary of State, or whether a new Representative should be appointed who would remain under the supervision of Ambassador Keyes. Mr. Meese supported Ambassador Keyes and Mr. Wallach in this discussion.

On December 23, 1985, Mr. Meese also contacted Robert H. Tuttle, the head of the Office of Presidential Personnel at the White House, on behalf of Mr. Wallach. On December 27, 1985, Mr. Wallach reported to Mr. Meese a proposal by Ambassador Schifter that Mr. Wallach accompany him to the 1986 meetings as his Alternate, and become the Representative for the meetings in 1987. Mr. Meese undertook to pursue this proposal for Mr. Wallach with both Ambassador Schifter and the White House.

Mr. Wallach became an alternate delegate of the United States to the meetings of the Human Rights Commission held in Geneva, Switzerland, from February 3, 1986, through March 14, 1986. In April 1986, at Ambassador Keyes' suggestion, Mr. Meese contacted Ambassador Vernon A. Walters, the United States delegate to the United Nations, to promote Mr. Wallach's appointment as Representative to the Human

Rights Commission for 1987. On April 25, 1986, Ambassador Keyes also circulated a memorandum in support of Mr. Wallach's appointment which stated:

Mr. Wallach's candidacy has the strong personal endorsement of U.S. Attorney General Edwin Meese, who called both myself and General Walters to recommend Mr. Wallach for the position. Even though General Walters does not know Mr. Wallach, he respects the Attorney General's judgement and, therefore, concurs in this appointment.

However, Ambassador Schifter resisted Mr. Wallach's appointment. Shortly thereafter, on July 2, 1986, the Department of State rejected Ambassador Keyes' recommendation of Mr. Wallach on the basis that the position of Representative was not appropriate for a non-career appointment by the Department of State. It was concluded that the position was appropriate either as a career appointment or a White House political appointment.

On July 16, 1986, Mr. Meese contacted Mr. Tuttle and recommended Mr. Wallach for the Representative position with the rank of Ambassador. Mr. Tuttle recalled that Mr. Meese suggested Mr. Wallach for this position or a "bigger job." Mr. Meese did not remember this specifically, but recalled in his testimony before the grand jury ". . . I am sure that it is possible I may have mentioned, if he had had some discussion of that, of a possible bigger job, although I don't

have a specific recollection of doing so." In addition, Mr. Meese contacted Deputy Secretary of State John C. Whitehead on behalf of Mr. Wallach.

Mr. Tuttle interviewed Mr. Wallach and received the recommendation of Ambassador Keyes. Mr. Tuttle then recommended that Mr. Wallach be appointed the Representative to the Human Rights Commission. Mr. Meese acknowledged that he strongly endorsed Mr. Wallach for that position. A White House memorandum reflecting President Reagan's approval of the appointment was prepared on July 17, 1986.

At the request of the White House, Ambassador Schifter resigned from his position as Representative to the Human Rights Commission. President Reagan appointed Mr. Wallach to that position on October 21, 1986.

The Department of State began the process of according Mr. Wallach the rank of Ambassador on October 24, 1986. Secretary of State George P. Shultz nominated Mr. Wallach for that rank by a memorandum to the White House dated November 26, 1986. White House documents showed that President Reagan approved this rank on December 4, 1986; however, the matter was delayed and resubmitted to the Office of Presidential Personnel on February 18, 1987. Department of State records showed that the process of conferring the rank of Ambassador upon Mr. Wallach was not completed before the

and of the Human Rights Commission meetings, and that his nomination for the rank of Ambassador was withdrawn.

Mr. Wallach represented the United States at the meetings of the Human Rights Commission in Geneva, Switzerland, from February 2, 1987, through March 13, 1987. He resigned from his position on or about July 29, 1987.

D. Mr. Meese's State of Mind

Mr. Meese testified that he did not believe the actions of Mr. Wallach that benefited Mr. Meese were done in return for any acts performed by Mr. Meese that directly or indirectly benefited Mr. Wallach. Mr. Meese summarized in testimony before the grand jury his understanding of Mr. Wallach's motivation:

Independent Counsel: At any time did you ever discuss with [Mr. Wallach] the reasons why he might choose to so actively go out and seek what appears to be help in -- in handling a problem for you from other people?

Mr. Meese: Well, yes, He was a good friend, and he was always concerned about the fact that we were sacrificing considerable financial gain by being here in Washington and working in the government.

Independent Counsel: Did he say that to you?

Mr. Meese: Oh, yes, on numerous occasions.

Independent Counsel: Did he ever give you any indication that he had any other expectation in connection with his being solicitous and concerned for you?

Mr. Meese: No.

Mr. Meese's testimony is not contradicted by any other direct evidence on this point. No other witness or document provided evidence that Mr. Meese at any time entertained a different belief about Mr. Wallach's motivations.

PART SEVEN

AQABA PIPELINE PROJECT

Introduction and Summary

The Aqaba pipeline project involved a proposal, first suggested by a representative of Bechtel Great Britain, Ltd., that a crude oil pipeline be constructed from Kirkuk, Iraq, to the port of Aqaba on the Red Sea in Jordan. The proposal, although at first of great interest to Jordan and Iraq, was never fully accepted by the two governments, and the pipeline was never constructed.

As will be developed later in the Report, during a crucial phase of the planning, Mr. Meese became personally and closely involved with the Aqaba pipeline project at the behest of his close friend E. Robert Wallach.^{207/} In order to place Mr. Meese's involvement and activities in context, this Report recounts the development of the Aqaba pipeline project from

^{207/} During the time of the initial and later contacts with Mr. Meese on the Aqaba pipeline project, Mr. Wallach's application was on file with the special division of the court in which he sought \$142,562.50 in legal fees and expenses for services rendered to Mr. Meese in connection with Mr. Wallach's representation of Mr. Meese in the 1984 investigation of Independent Counsel Jacob A. Stein. This court application was in lieu of Mr. Wallach's submitting a bill for his services to Mr. Meese. Messrs. Meese and Wallach had an agreement that if the court substantially denied Mr. Wallach's application then Mr. Wallach would bill Mr. Meese for his legal services.

its earliest stages, commencing in March of 1983, until the project was abandoned in early 1986.

Discussions between Bechtel representatives and officials of Jordan and Iraq began soon after agreement was reached on the proposed route of the pipeline from Kirkuk to Aqaba. During the early stages, the Iraqi officials expressed concern that Israel, through hostile action, might sabotage the project during or after construction. An attack on the pipeline would delay or disrupt the project; the Iraqi government would be required to pay hundreds of millions of dollars in interest payments on construction loans during the period of interruption. Because of those fears, the Iraqis insisted to Bechtel that the financing of the project include forgiveness of construction loan payments which would accrue during an interruption of construction or operation of the pipeline caused by Israeli aggression.

A wealthy Swiss industrialist and financier, Bruce Rappaport, with extensive interests and experience in the oil business, learned of Iraq's demand. He decided to become involved with the project, and attempted to obtain assurances from the Israeli government that it would not interfere with the pipeline project. Mr. Rappaport approached Bechtel in January of 1985 with a proposition -- he would obtain a written security guarantee from the Israeli government with respect to the pipeline project if Bechtel would agree to sell Mr. Rappaport oil at a 10 percent discount from the market

price. Mr. Rappaport would pay to Israel a large percentage of his profits in cash or in oil as a quid pro quo for its agreement not to commit an "overt act of aggression" against the pipeline.

Bechtel, after some internal debate, agreed to this proposal, with the further understanding that Mr. Rappaport would also obtain from Israel a political risk insurance package that would insure payment of the construction debt in the event the Israeli government violated its commitment. The situation was complicated by the fact that the Iraqi government did not recognize the Israeli government and would not accept any direct communications from or commitments by Israel.

In February of 1985, Mr. Rappaport obtained a letter from Prime Minister of Israel Shimon Peres which indicated his government's willingness to agree to written security guarantees for the pipeline.

However, by April 1985, it became apparent to Mr. Rappaport that the Israeli government was either unable or unwilling to provide the required financial commitment to establish an insurance fund, despite Mr. Rappaport's promise of cash payments or oil to the Israeli government. Accordingly, Mr. Rappaport sought the assistance of someone who could help him gain access to high-ranking United States government officials who, in turn, could assist him in obtaining United States support of the establishment of the

essential political risk insurance fund. Mr. Wallach was recommended to Mr. Rappaport as one such person.

Within hours of Mr. Rappaport's first meeting with and retention of Mr. Wallach for the purpose described above, Mr. Wallach contacted Mr. Meese, informed him of his new client and sought his assistance in connection with Mr. Rappaport's commercial project.^{208/}

In response, Mr. Meese telephoned the Assistant to the President for National Security Affairs, Robert C. McFarlane, and requested that he meet with Mr. Wallach on the Aqaba pipeline matter. Mr. McFarlane, having received a direct and extraordinary request from the Attorney General, agreed to such a meeting.

Mr. McFarlane met with Messrs. Wallach and Rappaport on June 24, 1985, after a June 10, 1985 scheduled meeting was postponed. Mr. McFarlane, who viewed the project as being in the interests of the United States, promptly assigned a senior member of the National Security Council (NSC) staff, Roger J. Robinson, Jr., to assist Mr. Wallach in obtaining United States government support of the political risk insurance package.

^{208/} Later, on August 8, 1985, Mr. Rappaport, at Mr. Wallach's request, wired Mr. Wallach's retainer fee of \$150,000 to the account of his money manager, Mr. Chinn.

Mr. Robinson, impressed with the priority and significance which Mr. McFarlane apparently attached to the project, acted promptly to implement his assignment. Within less than 24 hours, he established contacts with the Overseas Private Investment Corporation (OPIC), and expressed to OPIC both Mr. McFarlane's personal interest in the project and his hope that a way could be found to assemble the requisite political risk insurance package.

Before taking any extraordinary steps to obtain the insurance fund, the OPIC officials met with Mr. McFarlane to confirm the NSC's special expression of interest in an OPIC matter. That meeting occurred on June 27, 1985, three days after Mr. Wallach's meeting with Mr. McFarlane.

Mr. Wallach worked with OPIC officials and the NSC staff throughout the summer of 1985 to assemble the insurance fund. He kept Mr. Meese generally informed of the progress he was making in the project. However, an insoluble problem developed. OPIC and its private co-insurer, Citibank, refused to issue the political risk insurance sought by Mr. Rappaport without a "salvage package" -- i.e., without the creation of a fund from which the co-insurers would obtain reimbursement in the event that an attack by Israel resulted in a claim under the political risk insurance policy.

Assemblage of the salvage package proved to be impossible. First, Mr. Rappaport, without consulting Bechtel, made a commitment, later rejected by Bechtel, that Bechtel

would contribute one-third of the salvage package fund. Next, Mr. Rappaport's representatives made certain financial promises on behalf of the "oil lifters," Mr. Rappaport and the government of Israel, which later were abrogated.^{209/}

Faced with these insurmountable obstacles to a private sector solution, Messrs. Rappaport and Wallach determined that they would seek to persuade the United States government to assemble funds for the political risk insurance package, and also to fund the salvage package.

It was at this time in mid-September of 1985, that Mr. Rappaport met with Prime Minister Peres and other Israeli government officials in Israel. Following those meetings, Mr. Peres sent a handwritten letter to Mr. Meese on personal stationery which was delivered to Mr. Rappaport in Israel. Mr. Rappaport gave the letter to Mr. Wallach in Geneva, who delivered it to Mr. Meese in Washington, D.C. The letter stated, in pertinent part [with minor spelling corrections]:

I am following with great interest the projected pipeline from Iraq to Jordan as a possible additive to introduce economic consideration to this troubled land. Apparently an Israeli guarantee may help to pave the way to the construction of this p/l.

I would go a long way to help it out . . .

^{209/} Oil lifters were entities which would have contracted with Bechtel to purchase the oil and to place it on tankers for shipment to destinations.

I shall appreciate your good office [arranging an appropriate contact with the United States government] in this respect. I have asked my friend Bruce and Bob to let you know the whole story, and I shall depend on your judgment about the best way to handle this matter.

With many thanks,

Shimon Peres

When he delivered the letter to Mr. Meese, Mr. Wallach provided him with information orally and in writing concerning the sensitive nature and significance of the Israeli commitments to the security of the project.

In a two-page memorandum dated September 25, 1985, Mr. Wallach recounted conversations with Mr. Rappaport which apparently took place in Geneva on September 21 and 22, 1985, following Mr. Rappaport's return from Israel with the handwritten letter from Mr. Peres. In his memorandum, Mr. Wallach emphasized Mr. Rappaport's ties to and interest in strengthening the Israeli Labor Party. Mr. Wallach wrote of certain recent Israeli emigration events which, according to Mr. Rappaport, were helpful to the Labor Party. He also reported Mr. Peres' belief, as expressed to Mr. Rappaport, that the release of the Reverend Benjamin M. Weir, one of the American hostages, on September 14, 1985, was due to efforts of the Government of Israel, and that the United States government was indebted to Israel for that action.

In this "Personal and Confidential -- FOR YOUR EYES ONLY Memorandum to "EMIII," Mr. Wallach wrote:

2. B.R. has been financing private polls for quite a long time in Israel on behalf of labor-Peres. They demonstrate an increasing strength for labor and the high probability of elections, no later than March 1986.

3. He confirmed the arrangement with Peres to the effect that Israel will receive somewhere between \$65-\$70 million a year for ten years out of the conclusions of the project. What was also indicated to me, and which would be denied everywhere, is that a portion of those funds will go directly to Labor. [In the memorandum the word labor was typed with a lower case "l" and changed by hand to an upper case "L."]

In a second and longer memorandum dated September 25, 1985, Mr. Wallach made it clear that there was a quid pro quo for the willingness of the Government of Israel to provide security guarantees in connection with the Aqaba pipeline project. Mr. Wallach praised Mr. Rappaport's efforts in the pipeline project and wrote:

In addition, we all recognize that there would be no progress to this point had he [Mr. Rappaport] not been able to obtain the security package which, involves the never-to-be-stated but fully understood quid pro quo which helped to produce the commitment by the friendly country [Israel].

Mr. Wallach also said:

The P.M. is entitled to a response to [his letter to Mr. Meese] before he embarks upon his trip [to the United States]. If there is to be no greater emphasis by the USG upon the accomplishment of this project that has thus far taken place, (for whatever reason that provides the inhibition), the letter should be returned to the P.M. and become a non-document. (This has been requested).

In the second September 25, 1985 memorandum, Mr. Wallach summarized efforts that the United States government had undertaken as of that date as a result of Mr. Meese's first contact with Mr. McFarlane in May of 1985. He complained about the "so far largely unsuccessful, effort to provide private sector solution [to the political risk insurance and salvage package]." Mr. Wallach reminded Mr. Meese that the original plan was for Israel to deposit funds to support the salvage package for the insurance policy to be funded by OPIC and private insurers. He pointed out, however, that Israel was "unable to accomplish this on its own." Mr. Wallach recommended to Mr. Meese that the "USG find a way . . . to allow [Israel] to effectively provide a guarantee of the \$400 million (actually \$340-\$360) on a direct basis."

Upon receiving the Prime Minister's letter and Mr. Wallach's description of Mr. Peres' interest in the Aqaba pipeline project, Mr. Meese contacted Mr. McFarlane and solicited his advice as to how to respond to Mr. Peres. Mr. Meese did not inform Mr. McFarlane of the alleged secret arrangement, spelled out in Mr. Wallach's memorandum, to provide the Israeli Labor Party with a portion of the oil pipeline profits.

Thereafter, Mr. Meese sent a handwritten letter to Mr. Peres in which he suggested that Mr. Peres discuss the pipeline project with Mr. McFarlane. This exchange of

correspondence, and the second contact by the Attorney General with Mr. McFarlane on the subject of the pipeline, sparked renewed interest and activity by Mr. McFarlane and the staff of the NSC.^{210/}

Mr. Robinson resigned from the NSC in early September, and was replaced on the pipeline project by David G. Wigg. After receiving a briefing from Mr. McFarlane on the sensitivity and significance of the project, Mr. Wigg devoted a substantial amount of time in attempting to devise a plan for funding the salvage package that would obviate the need for an Israeli financial commitment, but would, instead, involve the use of United States government funds.

Mr. Wallach and Mr. Wigg met with the President of OPIC and his senior staff members within eight days of Mr. Meese's written response to Prime Minister Peres and his conversation with Mr. McFarlane. They emphasized the NSC's interest in the success of the project and the need for OPIC to cooperate fully in assembling a complete political risk insurance and salvage package. Messrs. Wallach and Wigg proposed a plan to OPIC whereby Israel would agree, if it

^{210/} These events were occurring despite the fact that, by September of 1985, it had become apparent to Bechtel, United States intelligence sources, and other interested parties that the Government of Iraq, for a number of reasons, had lost interest in the Aqaba pipeline project. There also were indications that the Government of Jordan was skeptical that the pipeline would ever be constructed.

disrupted the pipeline, to assign its "right" to United States government foreign aid funds to OPIC and the private co-insurer, Citibank.

By mid-October, 1985 OPIC General Counsel Robert G. Shanks and senior OPIC staff members were wary of Mr. Wallach, and skeptical of the legality and the propriety of his unusual proposition. Accordingly, Mr. Shanks asked the Department of Justice to give OPIC a legal opinion on the matter. Mr. Wallach insisted that such a request be addressed only to Mr. Meese, and not the Office of Legal Counsel, the office that usually handled requests for legal opinions. Mr. Shanks protested, but yielded to Mr. Wallach's demand. Privately, however, and unbeknownst to Mr. Wallach, Mr. Shanks delivered a copy of the request to the Chief of the Office of Legal Counsel, Ralph W. Tarr.

Meanwhile, Mr. Wallach solicited Allan Gerson to assist on the project. Mr. Gerson was a Department of Justice attorney, whom Mr. Wallach had recommended to Mr. Meese for the position of Deputy Assistant Attorney General in the Office of Legal Counsel. Mr. Wallach informed Mr. Gerson that OPIC would be sending a request to the Attorney General for a legal opinion. Mr. Wallach instructed Mr. Gerson to prepare a favorable response to the request. Mr. Wallach advised Mr. Gerson that this was an extremely sensitive matter, of importance to the Prime Minister of Israel, which had the full backing of the NSC and Mr. Meese.

Mr. Wallach also told Mr. Gerson that it was very important that this opinion be favorable, and that "no one else would know except [Mr. Wallach] and the Attorney General." Mr. Gerson received OPIC's request for an opinion, and undertook to prepare a response. According to Mr. Gerson, when he informed Mr. Meese that he was working on the project, Mr. Meese expressed awareness of the matter and indicated his approval to Mr. Gerson.

As Mr. Gerson was beginning to draft an opinion, he learned that Mr. Shanks had privately sent a copy of the OPIC request for a legal opinion to Mr. Tarr. Mr. Gerson informed Mr. Wallach of this development, whereupon an angry Mr. Wallach sent a note to Mr. Meese telling him that the OPIC staff was trying to bollix the deal by sending the OPIC letter through routine channels. Mr. Wallach expressed hope, however, that the matter would nevertheless "flow smoothly to A.G. [Allan Gerson], who is ready to go to work."

Mr. Gerson, aided by Mr. Wallach, wrote a brief memorandum of law setting forth a proposal for accomplishing their objective. Mr. Gerson personally hand-delivered a copy of that memorandum to Mr. Meese. Although Mr. Meese acknowledged that he received the memorandum from Mr. Gerson, a copy could not be found in the files of the Office of the Attorney General or in the files of the Office of Legal Counsel. Only Mr. Gerson appears to have retained a copy.

Meanwhile, shortly after receiving a copy of the OPIC opinion request from Mr. Shanks, Mr. Tarr duly assigned the matter to one of his staff attorneys. Any hope by Mr. Wallach or by anyone else that the request for a legal opinion would be a matter involving Messrs. Gerson, Wallach and Meese was dashed by the actions of Mr. Shanks and Mr. Tarr.

Mr. Wallach and Mr. Wigg became convinced by these and other related events that the OPIC lawyers and staff were determined to kill the assignment of foreign aid plan. Accordingly, they explored an alternative plan which, as did the assignment of foreign aid plan, involved funding the salvage package with United States government funds.

From late October through early December 1985, Mr. Wigg, in consultation with two Department of Defense (DOD) lawyers, developed a proposal for an alternative salvage plan. The plan, which would have required the approval of the President of the United States for a National Security Decision Directive (NSDD), was that the United States:

- (1) would appropriate additional monies (\$375 million) for the Foreign Military Sales (FMS) assistance program for Israel;
- (2) would require Israel to give a letter of guarantee that it would not take a hostile act against the pipeline;
- (3) would require Israel to place these additional FMS funds in an escrow account where they could be immediately drawn upon for the benefit of the political risk insurers of the pipeline project in

the event Israel took a hostile act against the pipeline; and

(4) would authorize the release of the funds to Israel if Israel did not take a hostile act against the pipeline during a specified period of time.

Meanwhile, in mid-October 1985, both Mr. Wallach and Mr. Meese had engaged together and separately in private conversations with Prime Minister Peres during a visit by Mr. Peres to the United States. During those conversations, Mr. Peres reiterated his personal interest in the pipeline project and his willingness to supply the requisite security guarantees on behalf of his government. During a private meeting in New York City between Mr. Peres, Mr. Wigg and Mr. Wallach, the Prime Minister apparently received from Messrs. Wallach and Wigg a draft of a proposed letter of guarantee for his signature.

Upon receipt of the proposed letter of guarantee then or at a later time, Mr. Peres consulted with his advisers about the text of the draft. Thereafter, telexes were exchanged between Mr. Peres' representative and Mr. Rappaport until they arrived at mutually agreeable language for the letter.

On November 20, 1985, Mr. Peres wrote a letter to Mr. McFarlane which modified an earlier draft prepared by Mr. Wallach. Instead of giving security guarantees, as proposed by Mr. Wallach, the draft letter only gave assurances that Israel was prepared to make agreed guarantees concerning

the pipeline. Mr. Wallach, apparently unable to deliver the letter personally, instructed the Israeli Embassy in Washington, D.C. to deliver the letter to Mr. Wigg.

Following receipt of the letter of assurance, Mr. Wigg completed his alternative salvage package plan involving the use of FMS funds. On December 16, 1985, Mr. Wigg showed his proposed NSDD and accompanying documents to Mr. Wallach and to the Director of Central Intelligence, William J. Casey. The three men discussed the plan in a meeting in Mr. Casey's office at Central Intelligence Agency (CIA) headquarters.

On that day, Mr. Wallach reported by telex to Mr. Rappaport on the progress of Mr. Wigg's proposal. Mr. Wallach spoke in very upbeat and hopeful terms, and made light of the fact that Mr. McFarlane had resigned two weeks earlier. "[N]othing negative can be read into [the fact that Mr. McFarlane has not yet approved the proposed package]," Mr. Wallach wrote. "Transition events, holidays, and other priorities are factors." Then, in a reference to Mr. Meese, whom Mr. Wallach constantly referred to as "my friend," Mr. Wallach wrote "I have assurance from my friend that if necessary, he will engage new person on project. However, both he and man with whom we met this a.m. [Mr. Casey] both feel B.M. [Bud McFarlane] unlikely to have acted alone."

Within a few days of the meeting with Mr. Casey, Judge William P. Clark, former National Security Advisor to

the President, had a conversation with the new National Security Advisor, Admiral John M. Poindexter, about matters pending before the NSC.^{211/} Judge Clark informed Admiral Poindexter of his misgivings about NSC involvement in the Aqaba pipeline project. Admiral Poindexter thereupon instructed Mr. Wigg to meet promptly with Judge Clark.

Mr. Wigg met with Judge Clark, and briefed him on the proposed NSDD. Judge Clark's assessment of the proposal and of the Aqaba pipeline project as of December 1985 was that it appeared to be a "protection racket" that should not be supported by the United States. He advised Admiral Poindexter that the NSC staff should immediately withdraw from the project. Admiral Poindexter apparently accepted Judge Clark's advice, and NSC involvement in the project ceased at some point in January or February, 1986.

Mr. Wallach, however, was still hopeful of NSC involvement in the project as of February 3, 1986, when he telexed Mr. Rappaport that he "met with my friend [presumably, Mr. Meese], who will personally contact J.P. [John Poindexter] to arrange meeting for me, if it is necessary to obtain

^{211/} In the summer of 1985, Judge Clark had been solicited by Messrs. McFarlane and Wallach to represent the "White House Dimension" for the Aqaba project in meetings in Baghdad. The meetings were postponed. Judge Clark quickly soured on the notion of being involved in the project primarily because of his concerns about Mr. Wallach's self-aggrandizing conduct and lack of discretion.

signature of his superior [President Reagan]" on the NSDD for the FMS plan.

By February 1986, however, it was clear to Mr. Rappaport that the NSC involvement in the project and the United States government commitment to it were waning or non-existent. Mr. Rappaport no longer had any need for the services of Mr. Wallach; accordingly, he terminated their relationship.

The Aqaba pipeline was never built. The independent counsel has been unable to obtain any evidence, apart from Mr. Wallach's memoranda of September 25, 1985 to Mr. Meese, of the existence of a promise to pay something of value to a foreign political party in violation of the Foreign Corrupt Practices Act. Accordingly, there is insufficient evidence to conclude that the FCPA was violated by Mr. Meese or by anyone else.

The evidence does show, however, that Mr. Meese was expressly informed by Mr. Wallach of Mr. Rappaport's statements to the effect that a promise had been made to pay the Israeli Labor Party millions of dollars as part of an agreement with the Government of Israel that, in return for payments to the government by Mr. Rappaport, the Government of Israel would not take hostile action against the pipeline. If those statements by Mr. Rappaport were true, it is likely that a violation of the Foreign Corrupt Practices Act had occurred.

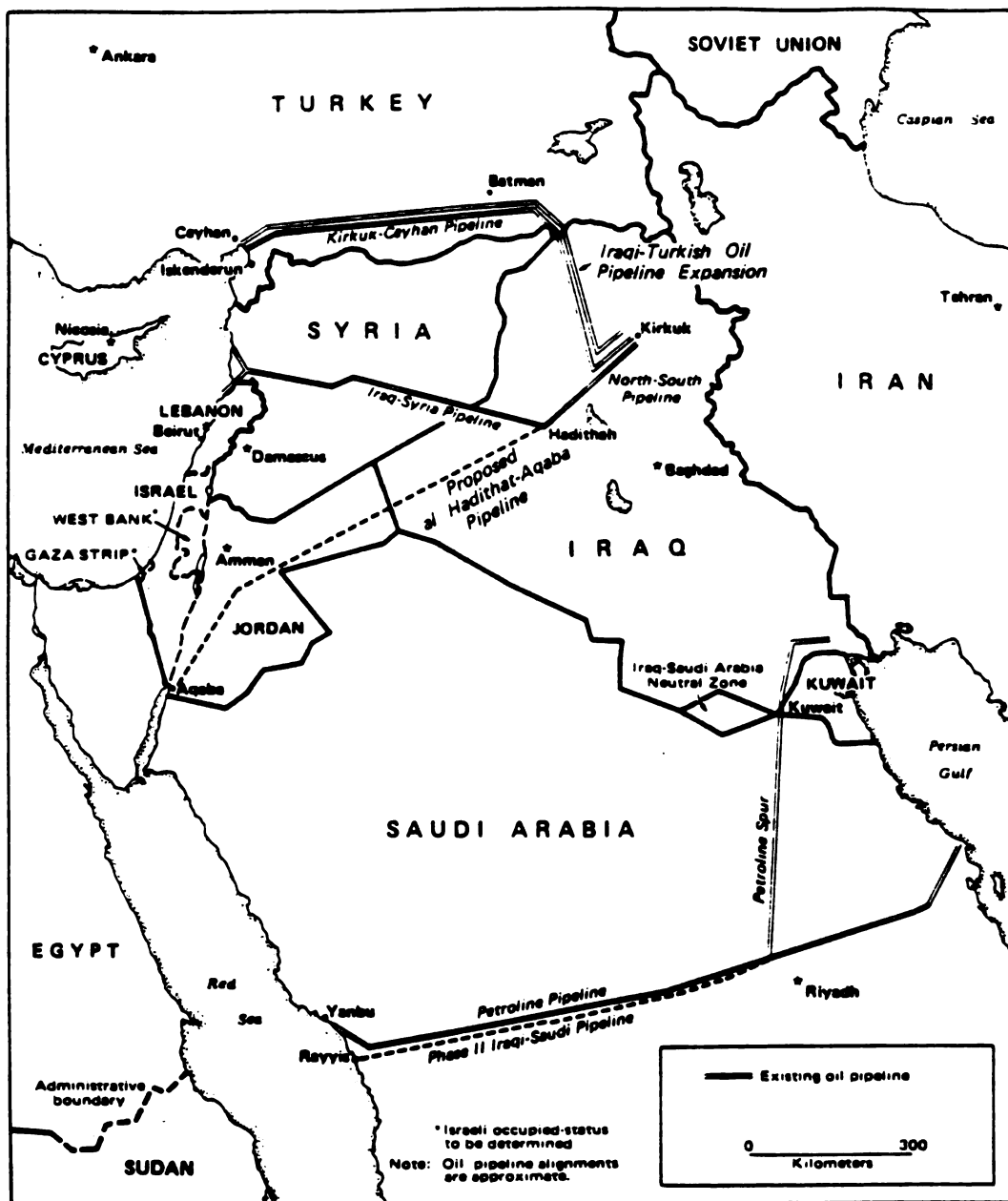
Mr. Meese, upon learning of Mr. Rappaport's alleged statements, took no action to terminate the United States government involvement in the Aqaba pipeline project or to even alert other United States government authorities of the possible existence of an illegal scheme. Instead, he took acts to further the commercial enterprise and, if an illegal bribery scheme was actually afoot as the Wallach memoranda suggested, Mr. Meese's actions would have furthered the scheme.

**I. MARCH 1983 -- BECHTEL CORPORATION PROPOSES
AQABA PIPELINE PROJECT TO IRAQ**

In March of 1983, representatives of Bechtel Great Britain, Ltd., one of the Bechtel Group of companies, went to Jordan to discuss two possible pipeline projects for the region. After consultation, Ashraf Ghonima, Bechtel's Business Development Manager for the Mediterranean and North African area, suggested the construction of a pipeline from Kirkuk, Iraq, to the Jordanian port of Aqaba. Aqaba is located on the Red Sea with tanker access to the Indian Ocean.

With extensive experience in large construction projects and oil pipelines, and with a long history of prior business dealings with Arab countries, Bechtel had the technical expertise and customer goodwill necessary to develop the Aqaba pipeline project.

Although not a major oil producing state, Jordan has historically permitted Iraq to use Aqaba as a port for crude oil transported by truck from the rich oil fields near Kirkuk. This heavy trucking activity, however, extensively damaged Jordanian roads, and worse, often injured and killed people and livestock. Construction of such a pipeline offered Jordan not only the likelihood of elimination of dangerous traffic, but also the prospect of revenue in oil transit fees from the nearly one million barrel per day (b/d) pipeline.



7825 6-88 STATE (NRGE)

Proposed Aqaba Pipeline as of Early 1985 with Iraqi Pipeline Options One (Turkey) and Two (Saudi Arabia) Shown Completed as of Fall, 1987.

Iraq, a major oil producer, also was interested in the Aqaba pipeline proposal because it needed to expand its crude oil exports to finance its war with Iran. To avoid Iranian attacks on tankers carrying Iraqi oil through the Persian Gulf, Iraq was exploring the possibility of transporting its crude oil through less vulnerable means: (1) expansion of an existing pipeline through Turkey; (2) construction of a pipeline spur to the Petrolina pipeline in Saudi Arabia; and (3) construction of the Aqaba pipeline. Although completion or substantial progress on the first two options in September 1985 eventually made the third unnecessary, Iraq did express interest in the Aqaba pipeline in 1984.

In 1983, the Department of State concluded that the Aqaba pipeline would further the United States' interest. As one Department of State official then explained:

By providing a new export route for Iraqi crude, it would contribute a significant additional source of crude oil to world markets, enhancing western energy security and [p]rice stability in the event of a suppl[y] disruption in the Gulf.

. . .

Jordan would benefit economically from immediate construction activity, trans[i]t fees, and additional employment upon completion, lessening Jordan's financial burden on its Arab and U.S. benefactors. The line would also provide Jordan a dependable source of crude. Such an important economic link between the countries would also bolster their political ties, no matter what governments may s[u]cceed in each capital.

After the suggestion of the Aqaba pipeline, Bechtel developed a detailed proposal and presented it to H.M. King Hussein I Ibn Talal, King of Jordan. King Hussein responded that he would discuss the proposal with Saddam Hussein at-Takriti, President of the Republic of Iraq. This discussion occurred by early December 1983. However, President Hussein expressed great concern about the potential Israeli threat to the security of the pipeline.^{212/}

King Hussein of Jordan assured President Hussein that his government would arrange for the security of the pipeline. President Hussein also desired the United States to play a role in lessening the supposed security risks posed by Israel to the pipeline. The United States Department of State's position was that it was prepared to enhance the security of the pipeline, but exactly what steps were contemplated is unclear. The Department of State cable traffic and interviews of its personnel conducted by the office of independent counsel suggest that the Department of

^{212/} This concern prevailed throughout all of the later discussions with respect to the proposed Aqaba pipeline, and two years later led to the involvement of a Swiss entrepreneur, Bruce Rappaport, and an American lawyer, E. Robert Wallach, in a plan to secure a written guarantee from Israel that it would not interfere with the pipeline's construction or operation.

State requested only oral assurances from Israeli government officials that their government would not threaten the pipeline. In view of the June 7, 1981 Israeli F-15 and F-16 bombing of the Iraqi nuclear plant at Tuwaitha, however, the Iraqi government was unwilling to rely on any public or private assurances from Israel about the pipeline security.

In January 1984, a delegation of United States officials led by Harry Rowen, former head of the National Intelligence Council, traveled to Iraq to discuss the Aqaba pipeline project. In a meeting with a senior Iraqi official in Baghdad on January 18, 1984, Mr. Rowen acknowledged Israel's potential threat to the pipeline's security. He pointed out the advantage of United States involvement by noting that during an Israeli-Egyptian conflict Israel had refrained from seizing Egyptian oil wells owned by United States companies. However, Mr. Rowen offered no guarantees about the security of the pipeline. The Department of State reported "high" Iraqi interest in the pipeline as of this time, and expressed some concerns about not raising false expectations in Iraq about Israeli acquiescence to the pipeline.

It is significant to note two themes underlying the pipeline discussions in Iraq among Jordanian, United States and Iraqi officials: (1) the Iraqi government's expression of serious concern about the pipeline security from Israeli attack; and (2) the view that the security of the pipeline

would probably be guaranteed by efforts of the United States, including the commitment of public and private funds.

The progression of the project from this point until its eventual abandonment in 1986 consisted of a complex sequence of steps aimed at obtaining Israel's assurance of nonaggression and at increasing United States diplomatic and financial involvement. Attorney General Edwin Meese III figured prominently in the later and most critical stages of those efforts.

A. The May 1984 Bechtel Proposal

In March 1984, Bechtel representatives began to solicit United States financing through meetings with officials of the Department of State and the Export Import Bank (EXIM). On March 29, 1984, Eugene V. Moriarty, Vice President of Bechtel Great Britain, Ltd., met with Near Eastern Affairs (NEA) Deputy Assistant Secretary James A. Placke and highlighted the two key problems confronting the project as being financing and security. While Mr. Placke pointed out that the United States could not guarantee the behavior of another government, he spoke of the symbolic involvement of the United States with Israel, and said that the NEA would attempt to deal with Iraq's security concerns.

As expressed to the United States, Iraq's view was that the security of the project would result from United

States participation, and not from Israeli assurances.^{213/} In fact, Israeli public statements that they might welcome a pipeline were apparently received by the Iraqi leadership with alarm rather than satisfaction.

Other sources reported to the United States during this period that the Iraqi officials favored the Saudi pipeline proposal instead of the Aqaba pipeline for reasons including difficulties with Bechtel arising from the lack of third party guarantees, and their inability to reach a quick agreement with Bechtel.

In anticipation of an April 30, 1984 deadline for the financing package presentation to a Joint Committee formed by Jordan and Iraq (Joint Committee), on April 20, 1984, Bechtel applied to EXIM requesting a preliminary commitment to finance up to \$110 million of United States goods and services to be used in construction of the Jordanian portion of the pipeline.

On May 1, 1984, Bechtel representatives flew to Amman, Jordan, to present a Feasibility Study and Implementation Plan to the Joint Committee. The Plan was greeted with mixed, but largely favorable, reviews. However,

^{213/} Early in March 1984, the United States assured Jordan and Iraq that United States involvement in the project had not diminished.

the Committee was cautioned that the financial portion of the package was "less than firm."

Bechtel proposed that the pipeline be constructed in two phases, the first being a pipeline capable of transporting 500,000 b/d; the second phase being a pipeline capable of transporting one million b/d. The estimated capital investment for both phases was \$970,000,000.

In order to finance a project of this magnitude, Bechtel proposed that revenues of a portion of the crude oil -- perhaps 150,000 b/d -- be placed in an escrow account and used to retire the debt. At this time, Bechtel was exploring the possibility of using Nissho Iwai, a Japanese corporation, as the oil lifter for this portion of the oil transported through the pipeline. Nissho Iwai eventually ceased to have a substantive role in the proposed arrangement.

1. Israel's Initial Response

The city of Aqaba, Jordan and the Israeli tourist city of Eilat are located seven kilometers apart on the Israeli-Jordanian border at the head of the Gulf of Aqaba. The Israeli government was concerned that a major oil spill would harm the natural marine resources of the area and wipe out the lucrative tourist trade. Aside from those environmental concerns, Israel's general view of the proposal, according to interviews, reviews of cable traffic, and contemporaneous press accounts, was that it was of strategic

and economic importance to Israel's Arab neighbors around which a dialogue might develop.

Press accounts concerning Israel's favorable disposition toward the pipeline were viewed with suspicion and hostility by the Iraqi government. Fueled by a newspaper report of a planned United States/Israeli attack on a suspected Iraqi chemical weapons plant, Iraqi officials feared the Aqaba pipeline would be subjected to an attack similar to the 1981 bombing at Tuwaitha.

Jordanian officials also were distrustful of Israeli public pronouncements, and suspected that Israel would manufacture or prolong problems only to continue dialogue, not to advance the progress of the project.

2. May 22, 1984 -- Bechtel Is Awarded the Project Contract Subject to Conditions

On May 22, 1984, the Joint Committee presented Bechtel with a letter of intent to award Bechtel the project provided four conditions were satisfied:

- (1) there must be American financing of at least \$500 million for the project;
- (2) there must be American equity of at least 50 percent in the pipeline terminal;
- (3) the oil lifting of 150,000 to 200,000 barrels per day must be American oil companies; and
- (4) all agreements with the Joint Committee had to be signed only by Bechtel, EXIM and American banks.

The Joint Committee informally advised Bechtel that Nissho Iwai would not be permitted to participate in the pipeline project, despite a tentative oil lift agreement reached on May 15, 1984. Furthermore, the Joint Committee directed that no Arab banks could participate in the project. The message to Bechtel was clear: The Iraqi government insisted that the United States be heavily involved in the project in order to discourage an Israeli attack on the pipeline.

Bechtel representatives met with the United States Embassy staff in Amman to discuss the Joint Committee's four points. They were advised that the United States government at high levels -- including President Reagan -- supported the Aqaba pipeline project. With such substantial encouragement, Bechtel determined to make every effort to satisfy the four conditions.

What followed was a major, although eventually unsuccessful, five-month effort by Bechtel and United States government agencies to satisfy Iraqi concerns about the security of the pipeline.

**3. May to November, 1984 -- Bechtel's
Unsuccessful Efforts to Satisfy Iraqi
Security Concerns**

On May 27, 1984, an EXIM team led by Director Richard W. Heldridge met in Amman with the Jordanian officials, headed by Jawad Al-Anani.

On May 29, 1984, Bechtel submitted to EXIM a revised request for financing. The most significant changes were an increase in the amount of requested EXIM support from \$110 million to \$570 million, and the inclusion of the Iraqi portion of the pipeline in the financing request. Bechtel informed EXIM that the Joint Committee had established a condition of a minimum of \$500 million of American financing that Bechtel was required to meet before the project could go forward.

On June 9, 1984, Assistant Secretary for Near Eastern and South Asian Affairs Richard W. Murphy sent a memorandum to Deputy Secretary of State John C. Whitehead^{214/} recommending that Secretary Whitehead telephone EXIM Chief Executive Officer, William H. Draper IV, to inform him of the Department of State's interest in seeing at least one pipeline, the Aqaba pipeline or the Saudi pipeline, completed and operating as soon as possible. This memorandum also indicated that National Security Advisor Robert C. McFarlane was likely to contact Mr. Draper concerning the United States interest.

^{214/} Deputy Secretary of State Whitehead was responsible for matters relating to the Aqaba pipeline. Secretary of State George P. Shultz's past association with Bechtel precluded his involvement in matters concerning that company. In fact, Secretary Shultz had formally recused himself on July 21, 1982, from "any 'particular matters' (as defined in the federal conflict of interest laws and applicable regulators) involving any Bechtel company or related company."

On June 19, 1984, EXIM approved Bechtel's application for a commitment to guarantee the financing of up to 85 percent of the \$570 million requested. This EXIM commitment appeared to satisfy the first condition laid down by the Joint Committee.^{215/}

By late June 1984, Bechtel had arranged for itself and its American subcontractors to own a 50 percent interest in the Aqaba terminal company, thus satisfying the second of the four conditions. Bechtel also was committed to meeting the third and fourth conditions requiring oil lifting by American oil companies, and principally American participation in the financing and oil lift arrangements.

Confident that all major issues had been resolved, Bechtel representatives prepared for a July 16, 1984 meeting with the Joint Committee to negotiate the details of their agreement. During those preparations, the United States Embassy in Amman asked the Department of State "if the Israelis have given us a written position on the pipeline."

Responding in a strongly worded cable, the Department of State advised the United States Embassy in Amman that Iraq was emphatic about not wanting the United States

^{215/} EXIM extended its commitment for a \$570 million credit facility on March 7, 1985 and again on November 7, 1985.

government to seek or solicit direct assurances from Israel concerning the security of the pipeline. Instead, the Department of State advised that participation should be the "hedge." The Department of State instructed the United States Embassy in Amman that it could advise the appropriate parties that no written Israeli statements on the issue were sought or volunteered. This insistence that pipeline security be obtained through United States participation, instead of Israeli assurances, was often repeated by the Government of Iraq.

Just before the final July 16, 1984 Joint Committee meeting, Iraq added a new condition on the Israeli security issue that ultimately proved to be an insurmountable hurdle. On July 8, 1984, Iraqi officials advised Bechtel of their demand of a "force majeure clause" which would relieve Iraq from obligations to pay interest on the construction loans in the event of Israeli aggression against the pipeline.

Aggression by other countries was never mentioned; it later became clear that Iraq's sole concern was the threat of Israeli interference with the pipeline. In view of this new Iraqi demand, contract negotiations were delayed until July 25, 1984, and Bechtel hurriedly tried to arrange for high level EXIM attendance at a meeting to discuss the financing package and the new condition.

On July 18, 1984, representatives of Jordan, Iraq, Bechtel, and several banking institutions met in London. EXIM

did not attend the meeting because its counterpart French agency, which was involved in the project as a secondary source, had not yet issued formal commitments for part of the project financing, and EXIM feared that Iraq would try to play one agency against another in an effort to win better terms.

The principal issue discussed at the meeting was pipeline security. Bechtel had prepared a 12-point list of "practical measures to assure pipeline security," which made no mention of the forgiveness of loan payments in the event of Israeli aggression. Iraq continued to insist on a force majeure clause which would provide such relief. Moreover, at the meeting, the prospective lenders flatly rejected any suggestion of a provision absolving loan obligations in the event of aggression by Israel.

After the meeting, Chase Manhattan Bank agreed to take the lead in managing the financing, and also agreed to work with Bechtel toward a final financing package presentation in September 1984.

By mid-August of 1984, Bechtel and the United States government were getting strong indications from high level discussions between Iraqi and Jordanian officials that the Aqaba pipeline was "dead" as a result of the Government of Iraq's continuing demand that the United States back pipeline security guarantees with a financial commitment. On August 24, 1984, Bechtel learned that Iraq had rejected its 12-point

security plan. At that point, Bechtel and Chase suspended their efforts to assemble a financing package.

Bechtel officials announced to United States Department of State personnel that Bechtel had withdrawn from the Aqaba pipeline project because its involvement was "not worth the trouble." Assistant Secretary Murphy prepared a status report for Deputy Secretary Whitehead describing the apparent stalemate and likely demise of the project:

The USG has consistently supported this project as being in our own interest as well as in the interest of Iraq and Jordan. We have demonstrated this support in a number of ways, and together with the U.S. contractor involved, have met the various requests made by the Iraqi and Jordanian Governments. It now appears, however, that Iraq has established the new, and we believe, unprecedented, "condition" that the U.S. would somehow assume responsibility for the ongoing utilization of the pipeline. EXIM credit guarantees and/or OPIC war risk and non-payment insurance can protect, and thus encourage, participation by U.S. creditors, suppliers, contractors, and investors. We see no way, however, in which the USG can take full contingent responsibility for financial obligations of the governments of Iraq and Jordan, nor do we see a rationale for doing so.

There was virtually no progress or activity on the pipeline proposal in the fall of 1984 other than an October 4, 1984 EXIM letter extending its commitment with respect to the pipeline. Stephen D. Bechtel, Jr., Chief Executive Officer of the Bechtel Group, met with King Hussein of Jordan during this

period, but that display of personal involvement and commitment did not cause Iraq to lessen its demands.

The stage was now set for the entrance of someone who could broker a deal which would produce a firm, written commitment of non-aggression from the Government of Israel, and arrange for the structuring of a United States financial security package in support of that commitment.

**II. DECEMBER 1984 -- MR. BRUCE RAPPAPORT
CONTACTS BECHTEL**

Bruce Rappaport, a 66 year old Swiss citizen, was born in what is now Israel, and moved to Switzerland in the late 1950s. He is a wealthy financier and industrialist who owns or has controlling interests in many corporations and banking institutions throughout the world. Mr. Rappaport made much of his fortune in the oil shipping industry, establishing in the 1950s Inter Maritime Bank, Inter Maritime Management and International Maritime Services,^{216/} companies which are all now part of the Inter Maritime Group.

Mr. Rappaport's Inter Maritime Group (IMG), is a holding company for several companies, including a bank and a shipping company. Mr. Rappaport has had other major financial holdings including large interests in the Antigua West Indies

^{216/}Mr. Rappaport is known for his involvement in a controversial dispute in the late 1970's with Pertamina, the Indonesian state oil company. The dispute involved allegations of overpricing by Mr. Rappaport and allegations of breach of contract by Pertamina.

Oil Refinery, Litco Bancorp of New York, Bank of New York, Belgian Refining Company and Cosalt, a ship chandlery business.

Mr. Rappaport has been a large contributor of funds to Jewish and Israeli organizations. As a young man, he had developed close ties to and worked with future leaders of Israel and with various elements of the government. As a result, he has ready access to several prominent Israeli government officials, including former Prime Minister Shimon Peres.

In November 1984, Mr. Rappaport learned of Bechtel's difficulties regarding the pipeline security demand. Mr. Rappaport became interested, but decided to explore Israel's position on the pipeline project before approaching Bechtel.

On November 14, 1984, Mr. Rappaport received an honorary degree from the University of Bar Ilan near Tel Aviv in recognition of his contribution of \$1 million to a center for Hebraic studies. Prime Minister Peres attended the ceremony. According to Mr. Rappaport, he then met with the Prime Minister and inquired whether he or his government objected to the proposed Aqaba pipeline and, if not, whether

he would be willing to give assurances that Israel would not interfere with the pipeline. According to Mr. Rappaport, Mr. Peres indicated that he would be pleased to give such assurances. Mr. Rappaport stated that there was no mention or suggestion by Mr. Peres that anything of value should be received from Mr. Rappaport or from anyone else in return for his assurances.

Mr. Rappaport then spoke with representatives of Nissho Iwai, with whom he was already doing business. As stated above, Nissho Iwai and Bechtel had originally negotiated an agreement in May 1984, pursuant to which Nissho Iwai was to lift, for a period of 10 years after completion of the pipeline, 35,000 b/d of Kirkuk crude oil from the Aqaba pipeline. Nissho Iwai also was to have provided the construction financing for the Aqaba pipeline project.

According to Mr. Rappaport's records, it is clear that he negotiated with Nissho Iwai before meeting with Bechtel. Thus, on November 22, 1984, Mr. Rappaport telexed Nissho Iwai that "IMG through one of its nominee companies is interested in full cooperation and participation in the [Aqaba pipeline] project . . . [W]e believe we can contribute more than just obtaining Israeli guarantee."

A. January 7, 1985 -- Mr. Rappaport Seeks Major Role in Project with Bechtel

On January 7, 1985, representatives of Bechtel, Nissho Iwai, and IMG met in Geneva, Switzerland. Ashraf

Ghonima and Vincent Doyle, Mr. Ghonima's supervisor, represented Bechtel at this meeting; Shiro Sakamoto represented Nissho Iwai. Mr. Rappaport, Douglas McDonald, and Naftali Raz represented IMG.

Mr. Raz prepared a report of the agreements reached at this first meeting. His report included a list of items that Bechtel purportedly had agreed to prepare for submission to the Iraqi authorities. Although Bechtel witnesses do not recall making such commitments, the items listed by Mr. Raz report offer a glimpse of the role Mr. Rappaport contemplated for his company in connection with the project:

- (1) "an offer to set-up a mechanism by which financial facilities [of IMG] will be put at the disposal of the Iraqi government for financing current and future development projects";
- (2) an obligation upon IMG to obtain certain "commitments and undertakings by the Israeli government," including:
 - (a) "an undertaking by the Israeli government not to cause stoppages of flow of oil through the pipe line, coupled with
 - (b) "a commitment by an acceptable insurance company to pay to the [institutions lending money towards the construction of the pipeline] any interest accrued and due to them during a period that the flow of oil will be interrupted as a result of" Israeli hostile acts in the area of the pipeline or towards ship movements in the Gulf of Aqaba, and

- (3) "in consideration for IMG obtaining such or similar commitments and undertakings by the Israeli government" Bechtel will enter into a "back to back" oil lift agreement with Nissho Iwai and IMG wherein Nissho Iwai would lift 200,000 barrels a day "over a 10 year period at prices that will reflect marketplace price fluctuations" and IMG would receive, through its nominee, Nissho Iwai, "the exclusive rights for lifting, processing and marketing of the said 200,000 b/d crude oil" to IMG.
[Emphasis added]

By the first undertaking, Mr. Rappaport sought a major role in the project. In addition to obtaining the necessary Israeli assurances, he contemplated that his corporate network would assist with the financing of the pipeline. Under this proposed arrangement to finance the pipeline by revenue from the sale of Iraqi oil, Mr. Rappaport would lift oil both during and after construction and would place pre-construction oil revenues in a fund that would be used to retire the construction debt.

The second and third commitments demonstrate that Mr. Rappaport intended to obtain an exclusive lifting agreement giving his company the right to lift large quantities of oil, in return for his efforts to obtain an Israeli guarantee not to interfere with the pipeline, and also obtain an insurance fund to cover the construction loan interest payments for Iraq in the event that the Israelis reneged on their security guarantee. This report of the meeting does not include any indication that Israel would

receive any money or oil in return for its security commitment.

Although the report of the January 7, 1985 meeting does not mention a price discount on the oil Mr. Rappaport would lift, an internal Bechtel strategy memorandum prepared on January 20, 1985, by Project Manager V. S. Nielson, stated that:

the Geneva party [IMG] said that they could arrange for the necessary 'security' and provide a guarantee which would enable the bankers (debt funding for the project) to include the necessary 'alleviation of interest during stoppage of the pipeline from specified causes' to be included in the loan papers. This party could also arrange for a crude oil offtake of 200,000 bbl/day for a period of up to 10 years at a preferential price. [emphasis added]

The Department of State learned of the Rappaport contact within a week of the January 7, 1985 meeting. Bechtel Great Britain, Ltd.'s Vice President Moriarty met with Department of State personnel on January 15, 1985, and advised NEA representatives that Bechtel was talking with a "Geneva-based Bank" on a possible solution to the "force-majeure issue." This solution involved the establishment of an "insurance fund" consisting of revenues from Iraqi crude.

In a handwritten memorandum on the January 15, 1985 meeting found in the NEA files, Frank Ricciardone, an NEA official, recounted that Bechtel was attempting to arrange for

Stephen Bechtel to visit Iraq, and that Bechtel was becoming optimistic about OPIC financing and financing from other sources.

The memorandum noted that Bechtel was talking to a "Swiss banker 'with important Israeli connections' -- but not obvious ones like Rothschild." The Swiss banker provided "very possible sources of finance, even [with] force majeure clause."

At this point, Bechtel again began talking to the Jordanian and Iraqi officials about the Aqaba pipeline proposal. In an internal Bechtel memorandum dated January 23, 1985, Mr. Moriarty detailed discussions with two key foreign officials, Dr. Al-Anani, Jordanian Minister of Industry and Trade and Mr. Samarrae, Deputy Minister of Petroleum for Iraq. Mr. Moriarty noted in this memorandum that Mr. Sammarae assured Ashraf Ghonima that the Iraqi government was:

deadly serious about doing this project and had hoped the recent formal exchange of USA and Iraqi Ambassadors and official recognition between the two countries would be sufficient to move the US Government policy-makers into a more positive position regarding assurance and support for the pipeline. [emphasis added]

Mr. Moriarty went on to say that "all [the Iraqis] are anxious to have is assurance they will not be obliged to pay any interest during a major Israeli intervention which

stops oil flowing through the pipeline. If this can be achieved, they say the project can move forward."

In this internal memorandum, Mr. Moriarty advanced the belief that the Government of Iraq was not concerned how Bechtel managed to provide the security assurances the Iraqi officials were seeking as long as they were provided. Mr. Moriarty presented a general plan, apparently discussed in whole or in part at the first meeting with Mr. Rappaport on January 7, 1985, whereby Bechtel might provide the risk assurance through a "combination of political risk insurance along with an escrow fund established as a result of early start crude oil lifting agreements plus OPIC insurance." Mr. Moriarty referred to discussions between Bechtel and OPIC and to the fact that OPIC had just begun dealing with Iraq as a result of the recent restoration of United States-Iraqi diplomatic relations.^{217/} The "early start crude oil lifting" was a reference to agreements to sell Iraqi oil to Mr. Rappaport and others while the pipeline was under construction, in order to immediately generate revenues from which loan repayments could be made.

Mr. Moriarty, in his January 23, 1985 memorandum, specifically referred to Mr. Rappaport and his potential role

^{217/} Diplomatic relations between the United States and Iraq were restored on November 26, 1984.

in developing such an insurance fund. This appeared to be another reference to discussions held on this point at the first meeting with Mr. Rappaport on January 7, 1985.

Mr. Moriarty concluded his memorandum by stating that the "State Department, Rappaport (through his Israeli source) and others all agree that . . . [it would be] madness" for Israel to attack Jordan. Nevertheless, "[i]f we can be creative and find some device to help overcome the real or imagined Iraqi paranoia about the Israelis, we can have this most lucrative project on a sole source basis."

Eager to provide the security assurances to Iraq by using the Israeli connections of Mr. Rappaport, Messrs. Moriarty, Ghonima, and V.S. Nielsen of Bechtel met on January 24, 1985 with Mr. Rappaport in Geneva. Also present at the meeting were Mr. Rappaport's associate, Douglas McDonald and Shiro Sakamoto from Nissho Iwai.

Mr. McDonald stated in notes of the January 24, 1985, meeting:

The clear indication [Bechtel received from the government of Iraq after recent meetings in Baghdad] was that the Iraq Gvt was definitely interested in the project provided the security guarantee was given and they specified the only method which would be acceptable: They want a clause in the contract which specifies that in the event of aggression by Israel, they will not be responsible for further payments and will cease to pay the accumulated interest.

At the January 24, 1985 meeting, Mr. Moriarty advanced the idea that perhaps one way to accomplish the security assurance was that:

Israel should indicate to the US-Govt. they would guarantee the security of the pipeline and that in the event of that being broken, the US-Govt could deduct the funds required to repay the banks from the allocation of resources for use of the Israel Govt. This would enable the US Govt to give the banks an assurance.^{218/}

According to Mr. McDonald, the January 24, 1985 meeting, resulted in:

general agreement that the Israeli Govt should receive some kind of payment for the security guarantee which could be made in the form of an insurance premium. [Bruce Rappaport] undertook to discuss this possibility in the right quarters. [emphasis added]

This was the first reference to any payment to Israel for the "security guarantee."

Mr. McDonald's notes of the meeting closed with a statement that it was agreed that Bechtel would contact Iraq

^{218/} The concept of deducting funds from an "allocation of [U.S. government] resources for use of the Israel[i] [government]" was not immediately seized upon by the parties, but arose later in discussions Mr. Wallach had with OPIC in September, 1985 and in his discussions with the National Security Council staff in October, 1985. See infra.

and Jordan separately "to inform them that they considered it possible to obtain the security in the form they requested whilst Inter-maritime would continue discussions with Israel."

A telex prepared by Nissho Iwai to its headquarters in Japan, which also summarized the January 24, 1985 meeting stated that, among the things agreed upon, Bechtel would meet with Iraq and discuss the "security arrangements without disclosing details." Bechtel would also seek from Iraq a "willingness to sell crude up to 200,000 b/d with lesser amount to be available prior to pipeline completion." Furthermore, this advance sale of crude oil could form the basis of an "escrow account to receive crude payments to assure that lending agencies are certain of debt service on short and long term loans." According to this Nissho Iwai telex, it was also agreed that Mr. Rappaport would "devise crude lifting method which funds the 'security fund' and insurance premiums."

On February 2, 1985, Mr. Moriarty and others held meetings with Jordanian officials, and agreed to provide a complete financial proposal by February 23, 1985 that would address the Iraqi concern of security. Bechtel advised the Jordanian officials and the Department of State that, in return for Iraqi oil to finance insurance, Bechtel would arrange for the assumption of the risk of interruption due to any Israeli attack. Bechtel would seek insurance from Lloyds of London or OPIC. There is no indication that Bechtel

advised the Department of State either that Mr. Rappaport would obtain an early oil lift agreement, or that he would undertake the arrangements to obtain the insurance fund for the security package.

The Department of State received an explanation for Bechtel's optimism from highly placed Jordanian officials. Within a week of the Bechtel meetings in Jordan, Jordanian officials advised the Department of State that the prospects for the Aqaba pipeline were better than at any point since June of 1984.

On February 4, 1985, Mr. Moriarty sent a telex to Mr. Rappaport who was then cruising off Antigua in the Caribbean on board his yacht the "Hanse." Mr. Moriarty advised Mr. Rappaport that he had attended recent meetings with high-placed Jordanian and Iraqi officials, during which it was made clear to Mr. Moriarty that there was "no doubt [that the] project we have been discussing is still very important to both of them but the security issue remains paramount." [Emphasis added]

Mr. Moriarty's telex also sounded a discouraging note about whether the Government of Iraq would agree to the requested early oil lift agreement providing 200,000 b/d, but he indicated that such an oil lift agreement would be available upon the completion of the project. Mr. Moriarty also indicated that Iraq held out the possibility of

"significantly less amounts starting before project completion."

Finally, in his closing to the telex, Mr. Moriarty referred to the summary notes of the first Bechtel-Rappaport meeting of January 7, 1985, prepared by IMG employee Raz:

paragraph two [of the Raz summary notes] indicated there would be an undertaking by a certain government [Israel] not to cause stoppages of the project and this would be coupled with acceptable insurance arrangements to pay lending institutions the accrued interest due during an interruption period. If you still believe this possible, then we should meet soonest with our senior financial management at a place convenient to all . . . Time is now of the essence.

The significance of this February 4, 1985 message is that it reflected the original plan that Mr. Rappaport would undertake to obtain a written security guarantee by Israel coupled with an insurance plan that would back up the security guarantee.

One day later, February 5, 1985, Mr. Moriarty wrote a "Strictly Confidential" memorandum and sent it by facsimile from Bechtel's London office to John Neerhout, Jr., the senior Bechtel officer in charge of all petroleum work, to Chief Financial Officer Cordell W. Hull, and the head of Bechtel's London office, H.B. Scott. The memorandum was in anticipation of a conference call to be placed later that day. In the memorandum, Mr. Moriarty suggested that Nissho Iwai be used as a "screen" for the oil lifting agreement with Mr. Rappaport

because of Mr. Rappaport's concerns that close association with Jewish organizations might affect Iraqi willingness to deal directly with him. Mr. Moriarty's memorandum continued:

Rappaport will undoubtedly recommend the use of 3 or 4 bankers of his choice, . . . which would reflect the back to back game plan Rappaport has in mind, namely one of building an insurance fund to take care of the eventuality of paying interest which will be due in the event of interruption. The Israelis will not cause such an interruption for a share in the insurance fund. It is fairly obvious they will seek this as a form of tribute for their willingness not to bother or interfere with the line. [emphasis added]

Mr. Moriarty also wrote that Bechtel competitors were making overtures to Iraq that they could deliver on the security assurances and that, if Iraq believed these competitors, it might abandon the sole source arrangement with Bechtel. Mr. Moriarty stated:

One of the things concerning me and Rappaport is how do we make certain, once we bring off all these assurances, that the Iraqis will provide the crude oil. That, of course, can be tied to the security package - no oil, no security - and, if one examines the logic of the situation, the Iraqis need cash flow and will deliver oil to obtain it.

This reference to "no oil, no security" underscored the fact that, from the inception, Bechtel and Rappaport understood that the oil lift agreement would be linked with the security assurances from Israel. And, as was discussed earlier in this same memorandum, it was contemplated that the

Israelis would be obtaining something of value from the oil lift agreement -- oil or money -- as a "form of tribute for their willingness not to bother or interfere with the line."

Handwritten notes of Thomas Thomason of the Bechtel Washington, D.C. office reflected a telephone conversation with Mr. Moriarty on the same day, February 5, 1985.

Mr. Moriarty indicated that Mr. Rappaport was either dealing with or had lined up five banks; that he wanted 200,000 b/d of oil; that he was going to "take discount[ed] oil \$ + put in [a] secur[ity] fund" and "give all or in part to Israeliis[sic]." [emphasis added]

Soon thereafter, the Bechtel officials agreed to meet with Mr. Rappaport at Le Mirader, an exclusive health resort in Mont-Pelerin, Switzerland. The stated purpose of the meeting was to "clarify details of security package and crude oil purchase agreements." In a February 8, 1985 telex to John L. Moore, Jr. of Bechtel, Mr. Moriarty had anticipated such a meeting and suggested that Bechtel should explore "a security package tied to the crude oil lifting" agreement. Later, in a telex of February 12, 1985, from Mr. Moriarty to Mr. Rappaport, Mr. Moriarty wrote that "[w]e hope for a definitive discussion on the crude oil lifting arrangements as it relates to security of pipeline."

On February 12, 1985, the day before the Mont-Pelerin meeting, Mr. Rappaport met with Nissho Iwai representatives and prepared the following preliminary

agreements, among others, in anticipation of the next day's meeting with Bechtel: (1) that Nissho Iwai and Mr. Rappaport would either form a new company or use an existing one which would jointly take over the full assignment of Bechtel's right to 200,000 b/d under its proposed agreement with Iraq and Jordan; (2) that with this assignment Nissho Iwai and Mr. Rappaport would have all rights to trade, market and ship the oil at their joint sole discretion; and (3) that "for certain reasons discussed today, [Rappaport] [would] have two thirds of the proceeds and [Nissho Iwai] [would] receive one third"

Present at the Mont-Pelerin meeting were Messrs. Moriarty, Ashraf Ghonima, and John B. Cooper representing Bechtel, Messrs. McDonald, Raz and Rappaport representing Mr. Rappaport, and Messrs. Sakamoto and Nishimura representing Nissho Iwai. Mr. Moriarty reported on his meetings with Jordanian officials and his confidence as a result that the Government of Iraq was now very interested in the pipeline project for a variety of reasons. He noted that the security issue was still the most important, but that he had been advised by Iraq and Jordan to make a "final offer."

Mr. Rappaport voiced his interest in having the crude oil committed to him at the beginning of the pipeline construction, not only upon completion of the project. He reported on his discussions with Israeli government officials, and said that Israel would agree that according to notes taken

by a Bechtel employee that "in the event of unprovoked attack stopping flow of pipeline, USG to deduct from USG grant funds to service interest. US increase grants to Israel by like amounts."219/

Mr. Rappaport further developed the insurance concept and possible agreements by explaining in his conversations with Israel officials. On the basis of those conversations, Mr. Rappaport suggested the following possibility: that "[i]n event of unprovoked aggression by GOI interrupting flow via pipeline . . . GOI will pay debt service on loans of EXIM bank/US & commercial banks incurred to construct project & service interest & fees during construction. The meeting ended with an agreement that Mr. Rappaport would meet personally with Prime Minister Peres in Israel on Sunday, February 17, 1985, to discuss the Israeli government guarantee. Two key letters were prepared in anticipation of that meeting.

219/ This suggestion was almost identical to the proposal the NSC staff later made in November 1985. According to these notes, Mr. Rappaport apparently also indicated that Prime Minister Peres offered the security guarantee "w/o compensation."

Notwithstanding these notes of the meeting, Bechtel witnesses did not recall Mr. Rappaport saying that Prime Minister Peres offered security "w/o compensation"; Mr. Moriarty always understood that there would be compensation.

1. February 14, 1985 -- Bechtel Letter to Mr. Rappaport

The day following the Mont-Pelerin meeting, Mr. Moriarty wrote a two-page letter to Mr. Rappaport in Mr. Rappaport's capacity as the President of National Petroleum, Limited (NPL). The letter was designed to set forth Bechtel's position at that point and its relationship with Mr. Rappaport. Mr. Moriarty made the following points:

- (1) Bechtel had been nominated as the exclusive contractor for the Aqaba pipeline project by Iraq and Jordan, but
- (2) the Executive Committee of officials from those two countries insisted that the project could not proceed unless Bechtel could give them some "security provision" that Israel would not cause any unprovoked aggression on the pipeline during construction or operation, and
- (3) the Executive Committee suggested that this security arrangement could take the form of an agreement by the lending institutions to defer payments of principal and interest on the loans for the project during a period of . . . interruptions.
- (4) Bechtel and NPL had discussed the security issue and "believe that an important factor which will enable us to move the project forward will be a written conditional undertaking from the Government of Israel giving evidence of its intention not to cause any interruption [of the pipeline]."
- (5) "[T]he Government of Israel should also consider the need to enter into [agreements]" with EXIM and others assuring the lenders that Israel would repay the balance of their loans in the event of an unprovoked aggression by

Israel against the pipeline. [emphasis added]

- (6) In the Bechtel-Rappaport discussions, Bechtel had agreed to obligate the Iraqi government to supply approximately "two to three hundred thousand barrels per day of crude oil, at a mutually agreeable price" at the Port of Aqaba.

Mr. Moriarty closed the letter by stating that "[i]t would be helpful for us to know if . . . Israel . . . is conditionally prepared to enter into such agreements" [emphasis added] He stated that, immediately upon receipt of such a positive reaction from Israel, Bechtel would meet with the United States government and the private lenders about the arrangement. Following such meetings, Bechtel would go to Jordan "to present the complete financial package along with the security provision and a crude oil purchase agreement."

Mr. Moriarty communicated these thoughts to Mr. Rappaport orally before sending this letter as reflected in internal correspondence of Bechtel and in the "Dear Bruce" cover letter to Mr. Rappaport that accompanied the letter described above. Mr. Moriarty reported to Bechtel on February 14, 1985, that "I read it to him over the telephone before sending it and he thought it made all the points we wished to make, clearly and simply without becoming too legalistic." In this internal Bechtel communication of Thursday, February 14, 1985, Mr. Moriarty noted that Mr. Rappaport "leaves in his private plane on Sunday morning for Israel and will meet

Shimon Peres that afternoon. Hopefully we will have an answer in principle by Monday and some form of documentation before our meetings in Washington"

In Mr. Moriarty's cover letter to Mr. Rappaport on February 14, 1985, he reminded Mr. Rappaport that Bechtel meetings were scheduled for the following week in Washington, D.C., and that they would "be far more productive . . . if there can be some form of written expression by the Government of Israel that what has been set forth in the [Bechtel February 14, 1985] letter is, in principle, acceptable and do-able."

Bechtel had arranged meetings with officials from the Department of State, OPIC, EXIM, and the Department of the Treasury, as well as a breakfast meeting with Iraqi Ambassador Nizar Hamdoon, on February 20, 1985. Mr. Moriarty's expectations are reflected in his February 14, 1985 confidential memorandum to Bechtel officials wherein he stated, "if the arrangements with the Government of Israel can be worked out, as Bruce Rappaport indicated they can, we will have made great progress indeed."

2. February 15, 1985 -- Mr. Rappaport's
Letter to Prime Minister Peres

The following day, on Friday, February 15, 1985, Mr. Rappaport sent a letter to Prime Minister Peres on NPL^{220/} stationery, about their meeting scheduled for the following Sunday. The letter, in its entirety said:

Dear Mr. Prime Minister:

I would like to thank you for receiving me at such short notice. As you will see from the enclosed letter from Messrs Bechtel, they confirm the pipeline from Iraq through Jordan to Aqaba. As discussed with you on November 14, 1984 in your office, you have been kind enough to assure me that your Government will give the necessary guarantees.

After I have explained to you the benefits deriving thereof to all concerned (including Israel), I would appreciate if I could receive a short note confirming those guarantees, so that Messrs Bechtel could proceed to close the consortium of the export-import bank in Washington and the British and French lending institutions, following which I would be grateful if we could discuss the text of such guarantees acceptable to you and the Iraqis.

Sincerely yours,

Bruce Rappaport
President

[emphasis added]

As indicated in the Moriarty correspondence, both within Bechtel and with Mr. Rappaport, Mr. Rappaport forwarded to Prime Minister Peres the February 14, 1985 letter from

^{220/} NPL was a Bermuda company, with no corporate officers, employees or assets.

Bechtel to NPL. However, just two days later, Mr. Rappaport would disavow the letter and insist upon the insertion of language that would purportedly provide the Government of Israel with stronger assurances that it would receive something of value in consideration for its willingness to give the requisite security guarantees.

3. Redrafting of Bechtel's
February 14, 1985 Letter

The evidence does not include the communications, if any, between Mr. Rappaport and Israeli officials which next followed -- presumably by long distance telephone or other telecommunications. Apparently, Mr. Rappaport did not travel as planned to Israel for the Sunday, February 17, 1985 meeting, due to a snow storm. Some intervening event after Mr. Rappaport sent the February 15, 1985 letter to the Prime Minister caused him to send a telex to Mr. Moriarty from Geneva on Monday, February 18, 1985, at 1:40 p.m. which stated:

Following our phone conversation of yesterday, [Sunday, February 17], and for the reasons I have explained to you, particularly in order to be in a position to assure them and him some reasonable returns as a consideration, of course, subject to your receiving the contract, I would like you kindly to put instead of the last sentence, [in your February 14 letter, the following paragraph:]

In our meeting in Mont Pelerin and before in Geneva, we have agreed that should you [Bruce Rappaport] cause the

threat of the Israeli Government to be eliminated in the event as mentioned above and for our company to obtain the pipeline contract, we confirm to you irrevocably that we shall consult with you and be guided by your experts in the negotiations in obtaining a discount of approximately 10 percent below spot F.O.B. Agaba or any other port in the interim and that your group will be exclusively [ap]pointed as the trader of such oil, the marketer and the transporter, it being understood that your group includes Nissho Iwai.
[emphasis added]

Mr. Rappaport closed the telex by stating "P.S. My meeting with the Prime Minister is for lunch on Sunday February 24th and I am leaving Geneva on Friday [February 22, 1985]."

Mr. Moriarty telexed back to Mr. Rappaport that day expressing disappointment that an "act of God" prevented Mr. Rappaport from making the trip to Israel so that Mr. Moriarty would arrive in Washington, D.C. the next day with no "real message." Mr. Moriarty assured Mr. Rappaport, however, that he would "try and double talk until your meetings next week."

In the February 18, 1985 telex Mr. Moriarty also agreed to adopt Mr. Rappaport's suggestion and eliminate Mr. Rappaport's name from the letter from Bechtel to NPL. Mr. Moriarty also proposed an alternative text for the closing paragraph in response to Mr. Rappaport's February 18 telex. The alternative text simply appeared to be more artfully worded as follows:

During our previous meeting in Geneva and Mont Pelerin, we agreed to work with your group [on a] mutually exclusive basis should you cause the threat of aggression by the Government of Israel to be eliminated so that Bechtel can proceed with the pipeline project mentioned above. We understand your group includes Nissho Iwai.

Our exclusive agreement with you includes your appointment as the trader of the crude oil as well as the marketing and transportation thereof. The crude oil will come from the port of Aqaba upon completion of the pipeline, or any other port in the interim.

We further confirm that we shall consult with your group and be guided by your experts during the negotiations for obtaining a discount of approximately ten per cent below spot price FOB Aqaba, or any other interim port.

Mr. Rappaport accepted the restatement proposed by

Mr. Moriarty. The letter to NPL was redrafted on February 19, 1985, to reflect those suggested changes. This new letter was identical to the February 14 letter except in two key respects:

(1) the February 19 letter eliminated

Mr. Rappaport's name from the face of the letter. That is, the "Attention: Mr. B. Rappaport, President" line above the salutation of "Gentlemen" was eliminated, and

(2) The last paragraph of the February 14 letter was eliminated and replaced with three new paragraphs.

The eliminated last paragraph of the original letter accepted by Mr. Rappaport, and forwarded by Mr. Rappaport to Prime Minister Peres, read as follows:

Your help in assisting us in this matter will be sincerely appreciated and, if the prospects for the arrangement are possible, we will immediately have to work out the necessary details for your company and Nissho Iwai to act as the crude oil marketer with acceptable terms and conditions for purchase and resale of the crude oil.

The key change to this last paragraph was the addition of the language in the February 19, 1985 letter concerning the (1) exclusive oil lift agreement Mr. Rappaport was to receive (2) at a 10 percent below spot crude oil prices, (3) if Mr. Rappaport eliminated the Israeli threat to the pipeline for Bechtel so that Bechtel could proceed with construction.

Again, as stated in Mr. Rappaport's February 18, 1985 telex to Mr. Moriarty, these changes were suggested by Mr. Rappaport "particularly in order to be in a position to assure them and him some reasonable returns as a consideration" Both Mr. Rappaport and Mr. Moriarty advised the independent counsel that the "them" was the Government of Israel and the "him" was Prime Minister Peres. The "some reasonable returns as a consideration" was a reference to the fact that the 10 percent spot discount would be a guaranteed source of annual income for Mr. Rappaport of approximately

\$200 million (at current market conditions and prices) with a portion going to Israel as consideration for the requested security assurances.

4. **February 25, 1985 -- Prime Minister Peres' Letter to National Petroleum, Limited**

On Thursday, February 21, 1985, just prior to Mr. Rappaport's departure for Israel, Mr. Moriarty advised him by telex of meetings Mr. Moriarty had just had on February 20, 1985, in Washington with, among others, EXIM and OPIC officials. Mr. Moriarty related the general consensus of the officials that "there is no way the banking industry . . . will ever permit forgiveness of payments due them under loan agreements, either interest or principal."

Mr. Moriarty also cautioned Mr. Rappaport in the February 21, 1985 telex against involving others in this delicate arrangement. He stated that "[y]our discussions with PM of course will be private and confidential and will not concern us regarding exposure at this time."

Mr. Moriarty and other Bechtel representatives had also met with Department of State officials on February 20, 1985, and advised them that they were putting together Bechtel's "best and final offer." According to a Department of State report of the meeting, Bechtel was looking to all available insurance sources, both domestic and foreign, to distribute the risk among a large group of insurance companies.

On or about Sunday, February 24, 1985, Mr. Rappaport flew to Israel. According to Mr. Rappaport's unsworn statement, he met with the Prime Minister late in the evening of February 24 at the Prime Minister's residence. He recalled that Prime Minister Peres was in his pajamas. Mr. Rappaport discussed the letter with the Prime Minister but did not provide any details of this conversation to the office of independent counsel.

On Monday, February 25, at 12:34 p.m. Geneva time, 11:34 a.m. in Israel, Mr. Rappaport's secretary telecopied Nissho Iwai that "Mr. Rappaport telephoned to say that he obtained the necessary letter and he has informed Mr. Moriarty."

A letter dated Monday, February 25, 1985, from Prime Minister Peres to the President of NPL, was hand-delivered by Prime Minister Peres to Mr. Rappaport in Jerusalem that day. There was no mention of Mr. Rappaport in the letter. It read as follows:

Dear Mr. President:

After your visit to Jerusalem of today, I take pleasure in confirming to you upon request that my Government will be ready to give agreed guarantees that it will not cause any unprovoked aggression resulting in the interruption of the construction of the pipeline or of the export of the crude oil from the port of Aqaba while the pipeline is completed (estimated 18 months from the commencement of the construction).

Whenever your group and Bechtel are ready with their final financial package, we will discuss with you the method of satisfactory guarantees.

We wish you and your associates success in your project.

Sincerely,

Shimon Peres

Mr. Rappaport, in his unsworn initial interview with the office of independent counsel, stated that this letter was drafted by Mr. Moriarty at the Mont Pelerin meeting on February 13, 1985. Mr. Rappaport said that he brought a draft of the letter with him to Jerusalem. Mr. Moriarty in his grand jury testimony said [**GRAND JURY MATERIAL** **DELETED**].^{221/} Mr. Rappaport insisted that there had been no discussions about "consideration" to Israel or payments to Israel in return for this letter before he traveled to Israel on or about February 24, 1985, to obtain Mr. Peres' signature.

Mr. Rappaport did say, however, that others in the Government of Israel who were consulted about the letter on or about February 25, 1985, wanted to add so many conditions as to make it useless. In persuading the Israeli officials not

^{221/} The operative first sentence of the Peres letter appears to be drawn from Mr. Moriarty's February 19, 1985 letter to NPL. This may explain the inconsistent recollections of Mr. Moriarty and Mr. Rappaport on the drafting of the Peres letter.

to change the draft, Mr. Rappaport said that he extended "a carrot" to the Israeli officials by noting that he could swap Iraqi oil for oil that could be delivered to Israel.

Mr. Rappaport also believed that, before agreeing to sign the February 25, 1985 letter, the Prime Minister first consulted with Deputy Prime Minister and Minister of Foreign Affairs, Yitzhak Shamir, Minister of Defense, Yitzhak Rabin, former Minister of Justice, Chaim Zadok, and Minister of Economic Planning, Gad Yaacobi.

On February 25, 1985, Prime Minister Peres advised United States Ambassador Samuel W. Lewis that he had been indirectly approached by Bechtel about the Aqaba pipeline, and that inquiries were made about Israeli guarantees against an unprovoked attack. The Prime Minister told Ambassador Lewis that in principle he was agreeable to giving guarantees, but that any such guarantee should be an "agreed guarantee" in which the United States could perhaps also be involved. When Ambassador Lewis told the Prime Minister that Bechtel was putting together a financing package, the Prime Minister appeared to be already informed of those arrangements. Prime Minister Peres, however, apparently did not inform Ambassador Lewis that he had that day signed a letter to NPL in which he expressed a willingness to have Israel provide guarantees against unprovoked aggression with respect to the pipeline.

**B. March 8, 1985 -- Bechtel Requests
Financial Commitment from
Israel to Support Written Assurances**

On Friday, March 1, 1985, V.S. Nielsen, the Pipeline Project Manager for Bechtel Great Britain, Ltd., and Mr. Moriarty met with Mr. Rappaport in Geneva, and were shown the February 25, 1985 letter from Prime Minister Peres.^{222/} Impressed by both the letter and the Prime Minister's commitment, Messrs. Moriarty and Nielson noted, however, that the letter did not address Iraq's demand for forgiveness of interest during a period of interruption due to an Israeli attack. Mr. Rappaport gave Mr. Moriarty a copy of the Peres letter. During the course of the March 1, 1985 meeting, Mr. Rappaport repeated his demand for an oil lift agreement at a preferential price and his desire to "do something" for Israel in connection with the project.

On Friday, March 8, 1985, Mr. Moriarty sent a lengthy letter to Mr. Rappaport in which he discussed the inadequacy of the February 25, 1985 letter from Prime Minister Peres. Mr. Moriarty wrote that although the letter

^{222/} Mr. Moriarty testified that he was [
 GRAND JURY MATERIAL DELETED] of the letter by
 Mr. Rappaport. [

GRAND JURY MATERIAL DELETED]
 Mr. Moriarty said that he did not ask Mr. Rappaport any
 questions about his conversations with Mr. Peres because he
 [

GRAND JURY MATERIAL DELETED
]

satisfactorily indicated Israeli willingness to give written security assurances, "it is silent on the financial security associated with such a guarantee." Mr. Moriarty went on to restate Bechtel's position as set forth at the earlier meetings with Mr. Rappaport:

As you know, the Israeli Government publicly indicated it would not interfere with the pipeline project. This was done on more than one occasion and was well publicized on the BBC Overseas Service and in the press. It was also conveyed to the US State Department on several occasions.

The position of the Governments of Iraq and Jordan is that such assurances are not sufficient since individuals in governments change, government policies change and other factors occur which may make such promises invalid. The only thing the Iraqis and Jordanians understand is some form of financial indemnification. It was this concern that caused them to create the concept of forgiveness of interest during a period of interruption caused by Israeli overt action.

The record of events in 1984 leading up to the initial Bechtel contacts with Mr. Rappaport and the Bechtel-Rappaport-Nissho Iwai meetings in January and February of 1985 corroborates Mr. Moriarty's account of events. The evidence indicates that, as of February 1985, Bechtel expected Mr. Rappaport to produce from Israel some sort of "financial security associated with [the written assurances]."

In his March 8, 1985 letter, Mr. Moriarty stated "[w]e propose you suggest to Prime Minister Peres that

consideration be given to" the concept of Israel agreeing to compensate the pipeline owners if Israel interferes.

Mr. Moriarty then articulated a specific proposal whereby the Central Bank of Israel would open an irrevocable letter of credit in the amount of \$250 million, payable to a trustee bank. Funds would be drawn against this letter of credit upon any Israeli interference with the pipeline.

In a reference to the "no oil, no security" concept that had been developed earlier at the initial meetings with Mr. Rappaport, Mr. Moriarty wrote:

Needless to say, if the Iraqis do not deliver the oil, the security arrangement can be aborted. This would protect the delivery of oil to the 'third party' [Israel] we discussed and give the assurance they [the Israelis] need that the oil supply will provide the incentive for providing the financial guarantee.

Mr. Moriarty wrote that Bechtel had decided not to show the February 25, 1985 letter to the Government of Iraq, but that Bechtel senior management would be meeting with Iraqi government officials in Baghdad within a week concerning the final Bechtel proposal.

Mr. Moriarty closed by stating that what made Bechtel's position with the Government of Iraq unique was that "we have an exclusive sole source relationship. If we can deliver a rational security package to the Iraqis . . . then we can continue to obtain the preferred crude oil purchase and

the control of the project." If Bechtel could not deliver on the security package, then they would lose the exclusive relationship and the project would be opened for "full and competitive bidding."

On March 8, 1985, Mr. Moriarty sent copies of his letter to Mr. Rappaport to some of Bechtel's senior management, Messrs. Hull, Moore and Cooper, which caused them to question the wisdom of working with Mr. Rappaport primarily because of the business and political implications of negotiating a secret deal with Israel. Nevertheless, the discussions with Mr. Rappaport went forward.

On Monday, March 11, 1985, Mr. Moriarty spoke by telephone with Mr. Rappaport about an additional letter from the Government of Israel that Bechtel believed would be sufficient to eliminate the security problem for Iraq. The following day, Mr. Moriarty sent a draft text that was to appear in Bechtel's "last and final offer" to Iraq and Jordan. This draft text was divided into two sections respectively entitled "Owner Indemnification for Loss of Use" and "Payment Deferrals." In summary, the suggested language for the "Owner Indemnification" section provided essentially for the following:

- (1) A third party would indemnify the pipeline owners for loss of use of pipeline if Israel caused the damage. The mechanism for the owners to receive the payments could be as follows:

(a) An offshore bank -- most likely in Switzerland -- would act as trustee for a trust account opened at the bank with an irrevocable letter of credit from a different financial institution which would provide for the drawing by the pipeline owners of up to \$250 million under following conditions:

- (1) The pipeline owners would make a request for a draw and certify that Israel has attacked the pipeline;
- (2) The request for payment would be submitted to an international arbitration panel to determine if, among other things, an Israeli hostile act has, in fact, occurred.

The proposed "Payment Deferrals" section provided for the deferral of payments to the lenders on interest and principal for up to two years if the pipeline construction or operations were interrupted "in the event of an act of sabotage, terrorism, physical attack or blockade" by anyone.

On March 12, 1985, Mr. Moriarty also sent to Mr. Rappaport a new draft of a letter for Prime Minister Peres' signature. Mr. Moriarty drew from the language of the Prime Minister's letter of February 25, 1985. In that letter the Prime Minister had said that his Government "will be ready to give agreed assurances" and that "[w]henver your group and Bechtel are ready with their final financial package, we will discuss with you the method of satisfactory guarantees."

[emphasis added]

In his March 12, 1985 draft letter, Mr. Moriarty suggested the following language (emphasis added):

I take pleasure in confirming to you upon your request that my Government is ready to provide your group and Bechtel with a specific form of guarantee that it will not through an overt act of aggression interrupt the construction or operation of the Iraq/Jordan pipeline, the Aqaba crude oil terminal facilities or the export of oil from the port of Aqaba.

In evidence [of] our good faith, we are prepared to open an irrevocable Letter of Credit in the amount of \$_____ which would be held by an international bank of Trustees for a trust account established in the name of the pipeline and terminal facility owners. We suggest that payments from the Letter of Credit would occur when an international arbitration panel certified that my Government's action against the pipeline had in fact occurred. The panel would also determine the time period of interruption. Payment from the Letter of Credit would equal the period of interruption as a percentage of a two year total period. The full amount of the Letter of Credit would be paid for a two year continuous interruption. Multiple payments for more than one interruption would be available until the Letter of Credit was fully exhausted. The Letter of Credit will be opened upon request and have a tenure of seven years.

We wish you and your associates success in your project.

On Wednesday, March 13, 1985, at 10:25 a.m. Geneva time (9:25 a.m. London time) Mr. Rappaport telecopied to Mr. Moriarty in London his comments on Mr. Moriarty's draft letter for Prime Minister Peres' signature. Mr. Rappaport

wrote that "I think, for my friends [in Israel], a language that will look something like this may be more palatable."

Mr. Rappaport proceeded to insert a new paragraph as the first paragraph, and made only minor revisions to the remainder of the draft. Mr. Rappaport's proposed opening paragraph read as follows:

Following our last letter of [February 25, 1985] and with the understanding that in consideration for this assurance you still receive together with your associates Messrs Bechtel and Messrs Nissho Iwai 300,000 barrels per day of Iraqi crude for a period of not less than 10 years every month adjusted to the spot market and at a price of 10 percent below. During the construction of the pipeline Iraq/Jordan - Aqaba, you will be entitled to an allocation of approximately 50,000 barrels on the same conditions, the 300,000 barrels to commence upon completion of the pipeline.

On March 13, 1985, at 5:21 p.m. London time, (9:21 a.m. San Francisco time), Mr. Moriarty telecopied an "Urgent and Strictly Confidential" memorandum to Bechtel's Messrs. Hull, Moore, and Cooper in San Francisco, reading as follows:

Text of letter sent yesterday has been revised after discussion with Rappaport. We have obtained his comments and he insists that it is necessary letter have some obligation concerning crude oil supply and range of purchase price. Otherwise writer of letter [Prime Minister Peres] would not feel comfortable just giving security without a quid pro quo. Rappaport must have our acceptable text immediately since he must discuss it with Israeli Government officials prior his leaving Europe for North America

Friday. . . . Therefore time is of the essence. [emphasis added]

On Thursday, March 14, 1985, an internal Bechtel memorandum recorded the fact that neither Bechtel nor Mr. Rappaport had any intention of showing the proposed letter from the Prime Minister to the Government of Iraq or "to any other Government or to any third party." The memorandum, written by Mr. Moriarty for Mr. Scott's signature to Mr. Neerhout and other Bechtel executives stated, among other things, that "the purpose of the letter [is to be] one of comfort and financial assurance [to us] which will support our best and final offer to the Iraq/Jordan Executive Committee." Mr. Scott made note of the fact that Bechtel's Vice President Cooper had drafted the security indemnification language.

This March 14, 1985 Scott memorandum was obviously written in response to the concern of several senior Bechtel managers about the propriety and sensitivity of the arrangement with Mr. Rappaport. One of the expressed concerns was Bechtel's possible role as a "conduit" for oil from the Iraqis to the Israelis. In this March 14, 1985 memorandum Mr. Scott stated that while it was "originally suggested that Bechtel receive the crude oil and in turn directly transfer it to [NPL]," Bechtel now favored the creation of a terminal facility company that would obtain the crude oil allocation and would allow the crude oil transfer to NPL through an arrangement with Nissho Iwai.

On Monday, March 18, 1985, Mr. Scott sent a memorandum, drafted by Mr. Moriarty, to Mr. Neerhout addressing management concerns about whether there was any impropriety in Bechtel being:

involved in any way whatsoever in the crude oil relationship vis-a-vis the lifting organisation (Nissho Iwai and NPL/IMG) and the Iraq/Jordan pipeline project. . . . The concern of some Bechtel executives is that it may be an improper arrangement for us to be standing between the crude oil buying group [Israel] and the Iraqis, without the Iraqis knowing officially.

Mr. Scott wrote that a number of proposals concerning the possible roles Bechtel could take as an intermediary in the oil transactions were being considered.

On Wednesday, March 20, 1985, Bechtel representatives met with Jordanian and Iraqi officials in Amman and presented their proposed security package. The proposal included the points set forth in Mr. Moriarty's March 8, 1985 letter to Mr. Rappaport. That is, Bechtel proposed (1) that there could be a deferral of interest/principal payments on the construction loan for up to two years if there was damage to the pipeline; and (2) that Israel would open a \$250-500 million letter of credit in a bank trustee account with the determination of cause by Israeli aggression to be submitted to an arbitration panel. Bechtel advised Department of State officials that it was exploring the possibility of increasing United States equity in the project.

On March 27, 1985, Mr. Moriarty wrote Mr. Rappaport a letter reminding him of Bechtel's concern about being identified "with the very complex crude oil and security arrangements being provided for the [Iraq/Jordan] pipeline." Mr. Moriarty noted that the draft letter Bechtel prepared on March 12, 1985, "included the security arrangement plus the quid pro quo oil lifting arrangement." "We now wish to separate this into two letters," Mr. Moriarty wrote: one from Israel to NPL, which would relate only to the security arrangement, and one from the Oil Terminal Company to Nishho Iwai, which would relate only to the obligation to allocate oil to NPL.

Mr. Moriarty stated that this dual letter approach should be sufficient so that Mr. Rappaport could tell "those who are arranging the security [the Israeli officials] that the oil will be available through Nishho Iwai." Bechtel was uncomfortable with the idea of the security agreement being directly linked with the oil lift agreements.

Mr. Moriarty also wrote that the amount of a letter of credit would have to be increased from \$250 million to \$400 million. Mr. Moriarty advised the independent counsel that this increase occurred after Mr. Ghonima tested the concept of a letter of credit with Jordanian officials during the March, 1985 meetings in Jordan.

On Thursday, March 28, 1985, Mr. Rappaport responded to Mr. Moriarty's letter with a counter proposal.

Specifically, he proposed splitting his earlier March 13, 1985 draft into two letters whereby the first paragraph (which had been Mr. Rappaport's insert to the Bechtel draft of March 12) would stand alone in one letter and the remainder of the letter (which was essentially the original letter as proposed by Bechtel) would stand alone in a second letter. By having the Prime Minister of Israel author both letters and by having him state that the Mr. Rappaport's 10 percent discounted oil lift agreement was "in consideration for" the Israeli assurances of non-intervention in the pipeline, Mr. Rappaport was emphasizing his insistence on keeping the quid pro quo. In fact, Mr. Rappaport stated that he believed his proposal was "more palatable and workable" than the Bechtel split letters. He also stated that:

[t]here must be evidence of a consideration that in our capacity as National Petroleum Limited, we can give them the assurance to get something very substantial in return and this assurance must, through some correspondence, flow back to your source of oil.

In closing his March 28, 1985 proposal, Mr. Rappaport expressed impatience with Bechtel by stating that "I must have some comforting assurance from you that this approach to the Prime Minister would be the last one."

On Monday, April 1, 1985, Mr. Moriarty wrote a letter on behalf of Bechtel Great Britain, Ltd. to Nissho Iwai. This was essentially the second of the split letters

first proposed by Mr. Moriarty on the previous Wednesday. In the letter Mr. Moriarty stated that Bechtel had included Nissho Iwai's offer to lift Iraqi crude oil as part of the overall Bechtel final package presentation to the Joint Committee. Mr. Moriarty confirmed the following oil lift agreement terms, among others:

1. That the Aqaba Oil Terminal Company would receive approximately 300,000 b/d for ten years after completion of the construction of the pipeline and terminal facilities. The crude price will be at a discount of 10 percent off current spot market prices.
2. That during construction Bechtel would request that Iraq make available to NPL 25,000 b/d with the same commercial conditions.

The first of the resulting two letters -- the letter from the Prime Minister to NPL relating only to the security arrangements -- was apparently never composed.

1. **April 1-4, 1985 -- Bechtel and
Bruce Rappaport Meet with
Israeli Government Officials**

Bruce Rappaport traveled to Israel on Monday, April 1, 1985, with Mr. Moriarty. Mr. Ghonima traveled to Israel one day later, and, on Wednesday, April 3, meetings were held. First, according to all three men, a meeting was held with Minister Yaacobi at which Mr. Rappaport introduced the Bechtel officials. According to Mr. Rappaport, the purpose of this meeting was to impress the Minister with the

fact that he did, in fact, have the exclusive 10 percent oil lift agreement with Bechtel which would generate the funds Mr. Rappaport intended to pass through to Israel.

Mr. Rappaport had "held out the carrot of oil" to the Ministers in their February meetings. He insisted, however, that until the so-called "new" March demands of Bechtel for Israeli financial commitments to back up written guarantees, the Government of Israel had been prepared to give its assurances of non-interference without receiving anything of value in return. Mr. Rappaport's statements are inconsistent with the facts in two key respects: first, the Bechtel March demands for an Israeli financial commitment were not new demands, they were specific proposals as to the form of an Israeli financial commitment; and second, the requirement of a quid pro quo for Israel's security assurances had been a constant in the Rappaport-Bechtel discussions from the beginning.

According to Messrs. Moriarty and Ghonima, it was their understanding that Israel required a quid pro quo just for written assurances without financial commitments. Even according to Mr. Rappaport, in February of 1985 he held out "the carrot of oil" to the Israeli officials to persuade them not to qualify the February 25, 1985 letter from Prime Minister Peres.

After this general meeting between the Bechtel officials, Mr. Rappaport, and Minister Yaacobi, Mr. Rappaport

lunched alone with Prime Minister Peres and met separately with Minister Yaacobi and Mr. Peres. In Mr. Rappaport's initial interviews with the office of independent counsel, he stated that he never presented to those Israeli officials the second proposed letter for Prime Minister Peres' signature which would have given financial commitments in support of written assurances of non-intervention.

According to Mr. Rappaport, it became clear during these meetings that Israel simply could not make the requested financial commitments so that any such letter would be meaningless. Mr. Rappaport also stated that the parties agreed that the United States would be asked to assist in financing the \$400 million fund if it was in fact the position of the United States government that the pipeline was in the interest of peace and stability in the Middle East.

On Thursday, April 4, 1985, immediately upon returning from his trip to Israel, Mr. Moriarty reported on the Israel trip to Mr. Scott. An internal Bechtel telex, directed to Mr. Neerhout's attention and written by Mr. Moriarty for Mr. Scott stated:

Peres intends [to] talk to Reagan about pipeline indicating Israeli support to determine if there is anything more American government can or wishes to do to support pipeline project.

[Mr.] Moriarty will prepare a white paper for McFarland [sic]. Perhaps it would also be useful for them to talk to each before white paper is prepared since we suspect McFarland

[sic] has some knowledge of project through State Department reports.

2. April 10, 1985 -- Bechtel Delivers Briefing Paper to National Security Advisor McFarlane Which Summarizes Project and Notes Israeli Security Agreement Issue

On Wednesday, April 10, 1985, Mr. Moriarty telexed a cover memorandum to Mr. Neerhout advising him that he had arranged for Mr. Thomason, the head of the Bechtel Washington office, to deliver an accompanying letter to Mr. McFarlane's Administrative Assistant on April 10, 1985. Mr. Moriarty wrote the following to Neerhout:

You will note that I did not mention anything about the crude oil arrangement as it relates to the \$400 million performance guarantee. I think at this time it would be improper and imprudent to tie the two together. I believe the paper is sufficiently detailed that McFarland [sic] will be able to discuss it when he goes to the Middle East.

Similarly, in a cover memorandum to Mr. Thomason accompanying the McFarlane briefing paper on the same day, Mr. Moriarty wrote:

I believe that any indication of how we have obtained the \$400 million performance guarantee would be unwise.

The briefing paper for Mr. McFarlane was, in fact, delivered to Wilma Hall, Mr. McFarlane's secretary, by Mr. Thomason. In it the background of the Aqaba pipeline

project financing efforts was set forth in summary fashion. The first efforts to finance the project from oil lifting revenues were recounted. The expression of concern about security by Iraq and its initial demand for United States financial involvement in the form of EXIM bank commitments were also detailed within the context of the Iraqi statement that a major United States commitment would deter the Government of Israel from interfering with the pipeline.

The briefing paper went on to note that thereafter the Iraqi officials demanded more United States involvement, including: that more than 50 percent of the equity ownership in the Aqaba Terminal complex be held by Americans or American entities; crude oil lifting agreements for at least 150,000 b/d with United States companies; and United States financing for the project of at least \$500 million. Bechtel and the American suppliers effectively met these later demands, according to the briefing paper.

It then described the July 1984 "force majeure clause" and stated that Bechtel has "been trying to find a solution to the financial security problem." The briefing paper then stated: "We have discussed this issue several times with the State Department only to be advised that there is no mechanism whereby the US Government can help to solve the problem of financial assurance."

The briefing paper for Mr. McFarlane noted that Prime Minister Peres might speak about the project with

President Reagan "to see if there is some form of support that could come from the US Government, since the Israelis are anxious to see this project proceed."

Finally, the paper closed with the fact that "Bechtel has been able to arrange a private financial security package which will provide a \$400 million performance guarantee in a US bank for a period of four years . . . as a fund from which to pay any interest that would be payable in the event of an interruption during [a] four year period." This last briefing point was obviously overstating the status of the arrangements for any "private financial security package."

3. April 17-21, 1985 -- Bechtel Presents
Proposed Financial Arrangements for
Agaba Pipeline Project to Iraq

Yehia Al Tawil, an Egyptian consultant hired by Bechtel, and Mr. Ghonima traveled to Baghdad from April 17 through 21, 1985 to make the Bechtel presentation to Iraqi government officials. The Bechtel representatives used a "Commercial and Financing Arrangement" Bechtel paper dated April 1985 as a working paper for the meetings.

The following Wednesday, April 24, 1985, Mr. Ghonima supplied Bechtel management with draft minutes of a meeting in Baghdad in the form of a memorandum. He made a point of noting that "[t]here are certain items that were discussed in Baghdad and later in Amman that could not be included in this

memorandum." In summary, Mr. Ghonima noted that, among other things, Bechtel explained to the Iraqi delegation that "the letter of credit is [tied] to the lifting of 300 [thousand] barrels per day of oil for a period of 10 years and a 10 percent discount from the spot market price." Mr. Ghonima also noted that the Iraqi delegation seemed satisfied with the concept of a letter of credit and OPIC insurance, to compensate them for any damages to the pipeline by Israel.

4. May 2, 1985 -- Bechtel Seeks United States Government Support for Aqaba Pipeline Political Risk Insurance Package

On Tuesday, May 2, 1985, Messrs. Moriarty, Nielsen, and Thomason met with National Security Council staff member Howard Teicher. Mr. Teicher was Director, Near East & South Asia Affairs at the NSC. The Bechtel representatives had requested a meeting with Mr. McFarlane, but he was out of the country and had instructed Mr. Teicher to conduct the meeting in his absence.

On May 3, 1985, Mr. Teicher prepared a memorandum for Mr. McFarlane which summarized the meeting. He reported that Mr. Moriarty "expressed considerable frustration over the Iraqi tendency to construct new hurdles that prevent the conclusion of the deal." Mr. Moriarty generally advised Mr. Teicher of the Iraqi demand for a guarantee, involving United States government financial guarantees. Without being specific, Mr. Moriarty advised Mr. Teicher that Bechtel had a

security package proposal that would alleviate the Iraqi concerns about debt repayment during such a pipeline disruption.

Mr. Teicher advised the Bechtel representatives that Secretary of State Shultz would be meeting with King Hussein of Jordan soon (a trip was scheduled for May 12 and 13, 1985) which would be an important step relating to pipeline issues for a later meeting between President Reagan and King Hussein. Mr. Teicher suggested that the pipeline problem could be addressed by a Memorandum of Understanding between the United States and Jordan regarding the interest of the United States in the development and security of the Jordanian petroleum infrastructure.

Also on Tuesday, May 2, 1985, Messrs. Moriarty, Nielsen, and Thomason met with OPIC officials, including Vice President Felton McLellan (Mac) Johnston and Assistant General Counsel Robert C. O'Sullivan. In that meeting, the Bechtel representatives broached for the first time^{223/} the

^{223/} As early as February 1984, OPIC had been asked by the Iraqi Desk Officer at the Department of State whether OPIC could insure an Iraqi-Jordanian pipeline against adverse Israeli action. In 1984 OPIC insurance of the Iraqi portion of the pipeline was not available because the United States did not have diplomatic relations with Iraq. Even with the resumption of relations in November 1984, however, OPIC insurance could not be issued until Iraq and OPIC entered into an agreement under which Iraq became eligible for the OPIC program. OPIC negotiates such agreement with each country
(Footnote Continued)

possibility of OPIC providing political risk insurance^{224/} for the pipeline project financing in addition to, as discussed at earlier meetings, insuring United States corporate equity interest in the pipeline terminal. Mr. Moriarty told these officials that Bechtel was running out of time and could not yet satisfy the Government of Iraq's demands for the forgiveness of interest during an interruption caused by Israeli aggression.

(Footnote Continued)

that wants projects in its country to be eligible for OPIC's insurance. OPIC could have insured the two-thirds of the line on Jordanian soil because OPIC did have an appropriate agreement with Jordan.

^{224/} Since its creation in 1971, the Overseas Private Investment Corporation's primary business has been providing political risk insurance to qualified investors in business investments overseas. OPIC insures United States investors against three major types of political risks: (1) inconvertibility (this coverage protects the investor against the inability to convert into U.S. dollars local currency received as earnings, or return of capital on an investment); (2) expropriation (this coverage protects an investor against confiscation or nationalization of an investment without fair compensation); or (3) war, revolution, insurrection and civil strife. "Civil strife" includes politically motivated acts such as terrorism and sabotage.

OPIC is a self-sustaining agency. It has not received public funds since an original start-up appropriation, which was subsequently paid back to the United States Department of the Treasury.

**C. Interlude: Status of Government of Iraq's
Interest in the Project in May 1985**

By May 1985, Iraq had made significant steps toward completion of the two competing pipelines. In fact, a 500,000 b/d Iraq-Saudi Arabia spur line was nearing completion and was expected to be operating at capacity by mid-1986.

Negotiations finalizing a 500,000 b/d expansion of the Iraq-Turkey pipeline, which would raise that pipeline's total export capacity to one and one-half million b/d, were also nearing completion with construction contracts scheduled to be awarded in July 1985, and with project completion by early 1987. Thus, with such progress on the competing pipelines, Iraq no longer had an immediate need for the Aqaba pipeline.

The United States government, however, appeared to favor construction of the Aqaba pipeline over the available alternatives. This line was attractive because -- in addition to offering the Iraqis export capability -- the line would provide a needed boost to the Jordanian economy from its construction and operation. Nonetheless, even with this preference for the Aqaba pipeline, there were limits to the United States government's willingness to facilitate the construction of the pipeline. While the United States was willing to use normal programs available through the EXIM bank and OPIC to facilitate the pipeline, it was unwilling to use unconventional methods to finance the program. When Bechtel suggested that the United States purchase oil from the pipe-

line for the Strategic Petroleum Reserve, for example, officials at both the NSC and at the Department of State reacted in a manner which was, at best, unenthusiastic.

By May 1985, with EXIM bank financing in place, and with the United States government unwilling to take additional steps to promote the pipeline, the role of its United States government was limited to monitoring the situation and making preliminary inquiries into the legal issues involved in any Strategic Petroleum Reserve purchases. One month later, however, after Mr. Rappaport and Mr. Wallach -- with the assistance of Mr. Meese -- had successfully obtained the active interest of the NSC, the United States government began to consider much more extensive involvement.

**III. MAY 21, 1985 -- MR. RAPPAPORT HIRES E. ROBERT
WALLACH AND MR. WALLACH SOLICITS ATTORNEY
GENERAL MEESE'S ASSISTANCE**

In his initial interview, Mr. Rappaport advised the office of independent counsel that, after his trip to Israel in early April 1985, it was agreed that he would "go west" and assist in putting together an insurance package that would satisfy the force majeure demand. Mr. Rappaport did not turn to this matter until May 19, 1985.

On May 19, 1985, Mr. Rappaport met with a French lawyer, Samuel Pizar, in a Paris airport and sought his advice as to representatives in Washington, D.C. who could assist him in obtaining high-level United States government support for

the \$400 million insurance package required by Iraq.

Mr. Pizar recommended two names: Lyn Nofziger and E. Robert Wallach. Immediately following this conversation, Mr. Rappaport flew to the United States.

On May 20, 1985, at his suite in the Four Seasons Hotel in Georgetown, Mr. Rappaport met with Julius "Jay" Kaplan, a Washington, D.C. attorney who had previously represented Mr. Rappaport on arbitration matters. By this time, Mr. Kaplan had also begun representing Mr. Rappaport in connection with the arbitration aspect of the proposed security agreement^{225/} and in connection with the recent discussions with OPIC for political risk insurance. OPIC officials^{226/} joined Mr. Rappaport in his suite on May 20 and informally discussed Mr. Rappaport's interest in obtaining an OPIC political risk insurance package. Mr. Kaplan and Mr. Rappaport met with OPIC officials again on May 21, 1985 at OPIC's Washington offices. During these meetings, OPIC

^{225/} The previous week, Mr. Kaplan had met with several Bechtel officials, including Mr. Nielson, in London and Geneva, to discuss the specific terms of the proposed arbitration provisions of the security agreement.

^{226/} The OPIC officials were attorney Robert O'Sullivan, Vice-President Johnston, and B. Thomas Mansbach.

officials were presented with Mr. Rappaport's political risk insurance package.^{227/}

It was also during this visit to Washington, D.C. that Mr. Rappaport first met with Mr. Wallach. On May 21, 1985, Mr. Rappaport met Mr. Wallach for dinner at the Four Ways restaurant in Washington, D.C. at 5:00 p.m. According to Mr. Rappaport, he met Mr. Wallach for either lunch or dinner at an elegant restaurant suggested by Mr. Wallach. Mr. Wallach's calendar reflects a meeting with Bruce Rappaport at "4 Ways" at 5 p.m. on May 20 which was crossed out and an appointment with Mr. Rappaport moved from 4 p.m. to 5 p.m. on May 21.

Mr. Rappaport, in his preliminary interview by the independent counsel, remembered that he informed Mr. Wallach that he was seeking assistance to obtain a \$400 million insurance fund and that they discussed the possibility of obtaining the assistance of OPIC. Mr. Wallach then told Mr. Rappaport that he would arrange a meeting with National Security Advisor Robert "Bud" McFarlane. The conversation also set Mr. Wallach's compensation; Mr. Rappaport did not

^{227/} On Thursday, May 23, 1985, OPIC wrote Mr. Kaplan a letter confirming that the political risk insurance package presented to them by Messrs. Kaplan and Rappaport was "of interest to OPIC."

remember the specifics but he did not believe that Mr. Wallach was to receive any financial stake in the pipeline project. Instead, according to Mr. Rappaport, Mr. Wallach was to be compensated for his professional services at an hourly rate. At this first meeting, Mr. Rappaport retained Mr. Wallach to assist him with the pipeline project.

Immediately upon the completion of this first meeting, Mr. Wallach discussed the matter with Attorney General Meese. Mr. Meese's notes reflected that he had a conversation with Mr. Wallach about Mr. Rappaport at 8:20 p.m. on the night of May 21, 1985. The Attorney General's notes stated the following concerning this conversation: "Bruce Rappaport - Richest Man in Israel. Israel-Jordan-Iraq."

Mr. Wallach had been contacted to arrange an appointment with Mr. Rappaport by May 20, 1985 and had lunch with Mr. Meese on May 20. Mr. Meese testified that he had at least one discussion with Mr. Wallach about the Aqaba pipeline project before the conversation on the evening of May 21, 1985, when he made his note. According to Mr. Meese, his note reflected a conversation with Mr. Wallach at 8:20 p.m. on May 21 when Mr. Wallach mentioned to Mr. Meese the points reflected in the note; that Bruce Rappaport had been characterized as the richest man in Israel and that Mr. Rappaport and Mr. Wallach were involved in a project involving "Israel-Jordan-Iraq." Mr. Meese remembered this conversation as an occasion when Mr. Wallach sought Mr. Meese's advice on the

appropriate United States government officials to contact about the project which led Mr. Meese to recommend that Mr. Wallach contact Mr. McFarlane.

At about that time, Mr. Meese learned from Mr. Wallach that Mr. Rappaport was promoting a proposed pipeline construction project for a commercial purpose. It was Mr. Meese's understanding that the role of Mr. Rappaport in this project was to assemble the financial package.

Mr. Meese also learned that some Israeli guarantees were involved in the project, which led him to assume, mistakenly, that the pipeline was expected to traverse Israel. Mr. Meese generally recalled "that a guarantee against Israeli disruption of the project was one of the objectives." In addition, Mr. Meese learned, before he referred Mr. Wallach to Mr. McFarlane, that Mr. Wallach had been retained by Mr. Rappaport.228/

228/ Mr. Meese testified that he referred Mr. Wallach to Mr. McFarlane because "on something like this where it's kind of uncertain who in the government ought to handle it and there was a foreign policy matter, a matter of international relations, I would normally refer these things to the National Security Council staff."

At the time Mr. Wallach requested assistance from

Mr. Meese, Mr. Meese owed Mr. Wallach legal fees which

Mr. Wallach valued at \$142,562.^{229/}

^{229/} As described more fully in the portion of this Report relating to the services provided by Mr. Wallach to Mr. Meese, Mr. Wallach completed the representation of Mr. Meese in connection with the investigation by Independent Counsel Stein on September 20, 1984. Mr. Wallach had represented Mr. Meese pursuant to a retainer agreement dated June 18, 1984, which specifically contemplated that Mr. Wallach would look first to the Court for compensation under the Ethics in Government Act of 1978 and would only bill Mr. Meese if a fee application was not available or if "the Court nonetheless were substantially to deny payment." Mr. Meese prepared and circulated on May 24, 1985, a recusal policy as part of his ethics agreement with the United States Senate. It provided that, with respect to the relationship between Mr. Wallach and Mr. Meese arising from Mr. Wallach's representation of Mr. Meese:

I am recusing myself from participation in . . . any matter involving the law firms that represented me in the Independent Counsel's investigation (e. robert wallach, Esq., San Francisco California and Dickstein, Shapiro and Morin, Washington, D.C.), at least until my liability to those firms for attorneys' fees reported on my SF-278 Financial Disclosure Report has been discharged.

The application for attorney's fees filed by Mr. Meese with the independent counsel division of the United States Court of Appeals for the District of Columbia Circuit pursuant to 28 U.S.C. Section 593(g) on December 17, 1984 was granted in part on June 7, 1985. Mr. Wallach's application for fees of \$142,562 resulted in an award of \$76,870. On the day of the Court's order, Mr. Wallach publicly stated that he regarded the award as full compensation for his services.

Mr. Wallach did not receive payment from the court until October of 1985. On November 19, 1985, Dickstein, Shapiro and Morin sent Mr. Meese an account statement which indicated that the Court award of \$395,320 on its claim of

(Footnote Continued)

On Thursday, May 23, 1985, Mr. Wallach and Mr. Rappaport lunched together at the Four Seasons.^{230/} Later that same day, at 5:45 p.m., Mr. Wallach had a second meeting with Mr. Meese. On Saturday, May 25, 1985, Mr. Wallach had a lunch meeting with Mr. Meese at 1:30 p.m. Mr. Wallach has asserted his fifth amendment privilege against self-incrimination, and therefore has not given his version of any meeting or discussion with Mr. Meese concerning the pipeline project. Mr. Meese had no further recollection of his communications with Mr. Wallach at this time.

Mr. Rappaport also arranged to meet on May 24, 1985, with Henry "Hank" Greenberg, the head of American International Group (AIG), concerning war risk insurance for the pipeline project. Mr. Rappaport explained to Mr. Greenberg that the viability of the project depended upon the availability of insurance to protect against an Israeli attack. Mr. Rappaport showed Mr. Greenberg the February 25, 1985 letter from Prime Minister Peres giving Israeli

(Footnote Continued)

\$578,362 was not regarded by the firm as a substantial denial of compensation and that it fully satisfied his obligation to the firm.

^{230/} According to Mr. Wallach's calendar, he had an appointment scheduled with Secretary of State Shultz for the following day, Wednesday, May 22, 1985 at 4:00 p.m. Department of State records reflect that this was merely a photo session with the Secretary of State and the members of the United States Advisory Commission on Public Diplomacy of which Mr. Wallach was a member.

assurances of non-interference with the pipeline. He told Mr. Greenberg that OPIC had shown interest in the project, and asked that AIG consider providing \$100-150 million of the necessary insurance. Mr. Greenberg stated that AIG might be willing to participate if appropriate terms and conditions, including adequate security arrangements, were provided. At the conclusion of the meeting, Mr. Rappaport undertook to provide Mr. Greenberg with additional information as the project developed. Shortly thereafter, Mr. Rappaport sent Mr. Greenberg a packet of information about the pipeline project, including a copy of the February 25, 1985 Peres letter.^{231/}

**A. May 25-June 26, 1985 -- Meetings Between
Mr. Rappaport and United States Government
Officials and Financial Institutions**

On Sunday, May 26, 1985, Mr. Rappaport played golf with the late Director of the CIA, William Casey, and Arthur Hug, Jr. Apparently Mr. Rappaport and Mr. Casey first met when Mr. Casey was a private businessman years before. They shared a common love of golf, and would arrange to meet one another for games around the world. In addition to the Sunday

^{231/} Mr. Greenberg also met with Mr. Rappaport and Mr. Wallach on June 26, 1985, to discuss the project, but AIG's consideration of the matter never went beyond the preliminary stages, largely because of the lack of adequate security.

golf game, Mr. Rappaport met with Mr. Casey for lunch at "The Creek" on Monday, May 27, 1985. Mr. Casey made no record of these meetings. Mr. Rappaport, in his initial unsworn interview, said that his meetings with Mr. Casey were principally social. Mr. Rappaport remembers mentioning the Aqaba pipeline and another pipeline to Mr. Casey, but stated that "he was not aware of the intricacies."

On Monday, June 3, 1985, Mr. Meese and Mr. Wallach met for a breakfast meeting at 7:30 a.m. Mr. Wallach refuses to answer questions, and Mr. Meese has no recollection of what he and Mr. Wallach discussed at that meeting.

On Thursday, June 6, 1985, Mr. Meese and Mr. Wallach met for a 7:00 a.m. breakfast meeting. The Attorney General's handwritten notes reflected that one of the topics was "Allen Gerson." Apart from these notes, Mr. Meese has no recollection of the matters discussed at this meeting. Mr. Wallach refuses to give any information. Mr. Gerson is an attorney hired by Mr. Meese at the Department of Justice in September 1985, on Mr. Wallach's recommendation, as a Deputy Assistant Attorney General for the Office of Legal Counsel. Mr. Gerson had been Special Assistant to the Permanent Representative to the United Nations.^{232/}

^{232/} Later, in October, 1985, Mr. Gerson was asked to render a legal opinion on behalf of the Department of Justice in
(Footnote Continued)

On Thursday, June 13, 1985, Mr. Wallach's calendar shows appointments with Mr. Meese at 7:00 a.m. and a lunch with Mr. Meese and attorney Clark M. Clifford at 12 noon.

B. June 12, 1985 -- Mr. Rappaport Negotiates with Bechtel

Meanwhile, attorney Jay Kaplan was negotiating an agreement on behalf of Mr. Rappaport with Bechtel. On June 12, 1985, Mr. Kaplan sent Mr. Nielsen in London a draft Memorandum of Understanding (MOU) between Bechtel and NPL. The MOU provided, among other things, that NPL had obtained "a written undertaking from the State of Israel stipulating that it would not commit . . . an overt act of aggression [against the pipeline, and that NPL had negotiated with OPIC and other insurers] for the provision of the Security."

NPL had taken such action, according to the draft MOU, because Bechtel had agreed that Nissho Iwai would have the right to purchase from Iraq 300,000 b/d for 10 years at a 10 percent price discount.

In a key provision of the draft MOU, Mr. Kaplan wrote that "in consideration for NPL obtaining the Security, all of [Nissho Iwai's] right to purchase crude oil at the Discount will be assigned to NPL." This provision showed

(Footnote Continued)

connection with the proposed OPIC Aqaba pipeline insurance and salvage package.

Mr. Rappaport's strengthened bargaining position with respect to Bechtel. He no longer expected an intention to share the oil with his old partner, Nissho Iwai. Previously, on February 12, 1985, the stated understanding was that Nissho Iwai would join in the marketing of at least 200,000 b/d for one-third of the proceeds. Under this MOU, Nissho Iwai was now just an illusory participant in the arrangement. In fact, one month later, on July 18, 1985, Mr. Rappaport terminated the arrangement between Nissho Iwai and NPL, which ended Nissho Iwai's involvement in the Aqaba pipeline project.^{233/}

^{233/} Meanwhile, Mr. Rappaport began discussions directed toward replacing Nissho Iwai with Adams Resources and Energy, a Houston based company, as the nominal oil lifter. In approximately March of 1985, Mr. Rappaport called K.S. "Bud" Adams, the Chairman of Adam Resources, to request that Mr. Adams, who had never met Mr. Rappaport, come to New York to discuss purchasing some crude oil. Mr. Adams suggested that Mr. Rappaport, instead, send a representative to Houston. Mr. Adams believed that Mr. Rappaport probably obtained his name from a mutual acquaintance.

About two weeks later, Mr. Rappaport's representative, Naftali Raz, came to Houston for a meeting with Mr. Adams. Mr. Raz explained, without providing any details, that Mr. Rappaport was looking for an American company to purchase crude oil from a new pipeline to be built from Iraq to Jordan. Mr. Adams indicated that his company might be interested, depending upon the terms. Accordingly, Mr. Adams and his representatives entered into discussions with Mr. Rappaport and his representatives that continued for several months.

By September 11, 1985, when Mr. Adams met with Mr. Rappaport and his associates in Geneva, it was clear that Adams Resources was to act as the nominal buyer of record of oil at a discounted price, and would then immediately resell the oil to one of Mr. Rappaport's companies at the same price.

(Footnote Continued)

On Friday, June 14, 1985, two days later, Mr. Kaplan sent a copy of the draft MOU to Bechtel's Eugene Moriarty, and suggested they talk by phone on Monday, June 24, to discuss changes in the MOU. Mr. Kaplan then stated that "Bruce Rappaport has indicated that this document is an essential precondition before he can take certain acts which are essential for the project to move forward." It appears that Mr. Rappaport was insisting on a firmer commitment from Bechtel before using his influence and resources to accomplish the security package for the project.

**C. June 24, 1985 -- Mr. McFarlane Meets
Messrs. Wallach and Rappaport at
Mr. Meese's Request**

At some time after Mr. Wallach talked with Mr. Meese on May 21, 1985, and provided him information, and requested his assistance in connection with the pipeline matter, but

(Footnote Continued)

Mr. Adams stated to the independent counsel that he was not told why Mr. Rappaport needed a nominal buyer, but Mr. Adams assumed it was because Mr. Rappaport was Jewish and could not buy Arab oil directly. The plan was for Adams Resources to make its profit either by obtaining a commission on the oil resold to Mr. Rappaport, or by being permitted to market a portion of the discounted oil for its own account. From Mr. Adams' perspective, the proposed deal simply "faded away" in the Fall of 1985.

In connection with these discussions with Adams Resources, Mr. Rappaport asked and received Mr. Adams' permission to establish a new company called Adams Resources Crude Oil, Ltd., Bermuda. This was a shell company that Mr. Rappaport apparently planned to use to repurchase the crude oil from Adams Resources.

before June 7, 1985, Mr. Meese telephoned Mr. McFarlane on behalf of Mr. Wallach. Mr. Meese recalled:

telling Bud McFarlane that he had a friend by the name of Wallach, that Wallach had come to him with a project relating to the Middle East, that as Attorney General, the matter did not fall within his sphere, but that it might be a matter of national interest, . . . he asked if McFarlane could talk to Wallach.

Mr. Meese testified that he may have informed Mr. McFarlane that Mr. Wallach represented Mr. Rappaport.

According to Mr. Meese, he did not tell Mr. McFarlane all the details he had learned about the project but:

I believe that I recounted to him something about the project, that Mr. Wallach had talked to me about a project and I probably talked about it in very general terms and that I thought it was a matter that might possibly be of national interest and asked him if he would talk to Mr. Wallach.

So I'm sure I described it in general terms but did not go into explicit detail.

Mr. Meese recalled "[t]he purpose of calling Mr. McFarlane was to refer [the pipeline project in its entirety] to him." The reason remembered by Mr. Meese for this referral was that:

there was an interest in getting the United States government involved in the project, and it had to do with the relationships with Israel to the project, and to be sure that Israel would not disrupt the project. That's all I can recall, but that there was an

interest in talking with people in the United States government about it. It was presented to me that this was something that would be helpful in terms of Middle East peace because it would bring together Israel and Jordan and Iraq. That's about all that I really recall knowing about it.

In sum, Mr. Meese testified that:

my only purpose [in calling Mr. McFarlane] was to put Mr. Wallach, as the representative of Mr. Rappaport, in touch with a knowledgeable person in the United States government who could then determine -- who could talk with him about the project because this was what they wanted to do.

Mr. McFarlane recalled that Mr. Meese told him that Mr. Wallach, a friend of his who was also an attorney, had recently brought to his attention a project to construct an Iraqi pipeline. Mr. Meese indicated that Mr. Wallach and Mr. Rappaport appeared to be involved in obtaining an appropriate commitment from Israel that the pipeline would be not attacked. Mr. Meese told Mr. McFarlane that he thought it was possible that Mr. McFarlane and the NSC staff should be involved in this matter. Mr. Meese asked Mr. McFarlane to advise Mr. Rappaport and Mr. Wallach whether the pipeline would be in the foreign policy interest of the United States.

From their conversation, Mr. McFarlane concluded that Mr. Meese was of the opinion that the building of the Iraqi pipeline would be in the national interest of the United States. According to Mr. McFarlane, Mr. Meese [GRAND JURY

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Mr. McFarlane scheduled a meeting with Mr. Rappaport and Mr. Wallach on June 10, 1985, at 1:15 p.m. The meeting was cancelled and rescheduled for June 24th, perhaps because Mr. Rappaport had meetings scheduled in London during this time period. Mr. McFarlane testified that it was not rescheduled at his request or due to any scheduling conflict arising from his office.

In anticipation of this meeting on June 10, Mr. McFarlane requested Mr. Teicher to prepare a briefing paper on the status of the project, which was completed on June 7, 1985. Mr. Teicher reminded Mr. McFarlane of Mr. Teicher's earlier meeting with Bechtel on this project and of the fact that he had prepared a memorandum on the project following that meeting. He also advised Mr. McFarlane that, when Bechtel had taken his proposed agreement to the Jordanians in mid-May, the Jordanians had responded that the proposal was premature. Mr. Teicher also reported that Bechtel had told him that the Government of Iraq was not responding to Bechtel inquiries about the status of the pipeline project. He ended the June 7, 1985 memo on a pessimistic note:

The Bechtel people are genuinely confused. They do not know what Iraq's strategy is, and have even picked up reports that Baghdad has approached other European firms for the solicitation of bids. Bechtel is still trying to pursue the project but, according to Moriarty, is close to breaking off their effort.

Although the memorandum is stamped twice with an "RCM HAS SEEN" stamp,^{234/} Mr. McFarlane indicated that sometimes he did not actually read all documents which were later stamped "RCM HAS SEEN," and stated he has no recollection of ever reading this memorandum.

According to Mr. McFarlane's calendar, the June 24, 1985 meeting with Mr. Wallach and Mr. Rappaport was scheduled to begin at 5 p.m. Mr. McFarlane's official schedule reflected that the meeting lasted 13 minutes. A memorandum preserved in the files of the NSC included "talking points" of the meeting. Mr. McFarlane recalled that these "talking points" reflected the points made by Messrs. Wallach and Rappaport to Mr. McFarlane at the meeting. The memorandum, which is captioned "Re: Iraq/Aqaba Pipeline Project" stated in its entirety:

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Wilma Hall, Mr. McFarlane's secretary, routinely used such a stamp in her practice of stamping all documents which were left in his office for review and later retrieved after his opportunity for review.

Iraq proposes to build a pipeline from Iraq through Jordan to Aqaba. The project is designed to carry one million (1,000,000) barrels of crude oil per day. The pipeline will be owned by the governments of Iraq and Jordan, but the terminal facilities at Aqaba will be owned by a private company in which Bechtel, U.S. Steel, GE and the Kingdom of Jordan will be shareholders. Bechtel will construct the project. It is proposed that a long term (10 year) contract be entered into to sell 300,000 barrels per day of the crude oil to the Nissho-Iwai Company (NIC). The Inter Maritime Group would work with NIC to lift this crude oil.

Iraq claims that it is concerned that Israel may, through an overt act of aggression, cause the construction and/or operation of the project to be stopped. It wishes to have protection against this political risk in the form of a commitment to pay an amount equal to the interest due in the project's debt financing accrued during such interruption.

Iraq insists that the commitment to pay be in the form of a letter of credit (L/C) in the total amount of \$400 million and be valid for a period of four years. A condition of payment under the L/C would be an arbitral decision that Israel committed an overt act of aggression causing the stoppage.

The parties have turned to the Inter Maritime Group to secure the L/C. The Prime Minister of Israel has given that Group an undertaking in writing that it would not commit such an overt act of aggression.

The U.S. Overseas Private Investment Corporation (OPIC) has advised that they have an interest in providing war risk insurance which would, in part, support the issuance of the L/C. An indication of support for this project to OPIC would be helpful in the extreme in converting this expression of interest into a firm commitment.

Thus far, OPIC has indicated possible coverage of \$100 million. We look to at

least similar amounts from Lloyds and AIG. In the event that the balance being demanded by Iraq cannot be secured from commercial sources, the Prime Minister of Israel requested me to attempt to obtain further support from the U.S. He also advised that, if invited, he would be prepared to come to the U.S. to discuss this with the U.S. Government directly. [emphasis added]

Apparently Mr. McFarlane indicated at this meeting that a special trip by Prime Minister Peres to the United States to assist in the effort to obtain financial support was not necessary. Mr. McFarlane did, however, give the expression of support for the project that Messrs. Rappaport and Wallach were seeking, and immediately assigned one of his senior aides, Roger J. Robinson, Jr., Senior Director for International Economic Affairs, to the matter.

Mr. Robinson recalled that, on June 24, 1985, Mr. McFarlane summoned him to come immediately to the Situation Room in the White House. It was a unique experience for Mr. Robinson because this was the only occasion that he could recall ever receiving a request directly from Mr. McFarlane to come immediately to a meeting without any advance notice of the subject or the task at hand.

When Mr. Robinson arrived at the Situation Room, Mr. McFarlane introduced him to Messrs. Wallach and Rappaport, and informed him that the two men were involved in a "very sensitive" project that Mr. McFarlane was assigning to Mr. Robinson. When interviewed by investigators for the

independent counsel, Mr. Robinson recalled that Mr. Wallach was introduced as a close friend of Attorney General Meese.^{235/} Mr. McFarlane informed Mr. Robinson that Mr. Wallach and Mr. Rappaport would brief him fully on the project and their specific needs. Mr. McFarlane ended the meeting by instructing Robinson to "get this done, I don't care how you do it."

Mr. Robinson recalled that, after this brief introduction, Mr. McFarlane left him alone with Messrs. Wallach and Rappaport. During a meeting of approximately 45 minutes, Messrs. Wallach and Rappaport described the project as construction of an oil pipeline from Iraq to the port of Aqaba in Jordan. They told him that two basic tasks remained to be completed: (1) arranging a \$400 million guarantee of project financing in the event of a disruption due to Israeli hostile acts, and (2) obtaining an Israeli guarantee not to destroy the pipeline.

As to the second issue, Mr. Robinson was told that Mr. Rappaport had a long standing personal friendship with Prime Minister Peres, and that it would be Mr. Rappaport's responsibility to obtain firm commitments from Mr. Peres and his government. Mr. Robinson viewed his role, pursuant to

^{235/} [GRAND JURY MATERIAL DELETED

Mr. McFarlane's instructions, to be to assist Messrs. Rappaport and Wallach in obtaining United States financial backing for the Israeli guarantees.

1. Meetings Surrounding the
June 24, 1985 meeting

On Sunday, June 23, 1985, the day before the meeting with Mr. McFarlane, Mr. Rappaport had met with Mr. Wallach between 4:00 p.m. and 5:30 p.m. at the Four Seasons Hotel in Georgetown, following which they had dinner at The Four Ways with Mr. Casey and his wife. Also, on Monday, June 24, 1985, Mr. Casey called Mr. Rappaport from CIA headquarters in Langley, Virginia at 11:25 a.m. and 6:20 p.m. Mr. Rappaport then met with Mr. Casey in his office at CIA headquarters at 7 p.m.

On Monday, June 24, 1985, Mr. Wallach had lunch with Mr. Rappaport. Later, Mr. Wallach and Mr. Rappaport met at 4 p.m. with former Secretary of Energy James R. Schlesinger.^{236/} After the meeting with Mr. McFarlane, Messrs. Wallach and Rappaport had dinner at the Four Ways Restaurant with Mr. Kaplan and others.

^{236/} Mr. Wallach also met with Secretary of Energy John S. Herrington for approximately 30 minutes on Thursday, June 27, 1985. Secretary Herrington recalled that Mr. Wallach described the pipeline project to him for his information.

On Tuesday, June 25, 1985, Mr. Wallach's calendar entries reflected a 4:00 p.m. meeting with Mr. Rappaport followed by a 7:00 p.m. dinner with him at the Regency Hotel. On June 25, Mr. Wallach wrote a five-page memorandum to Mr. Rappaport about the pipeline project in which he discussed the "two fundamental premises which underlie this project." The first being "the accomplishment of the U.S. government commitment" and the second being the accomplishment of "the program and [insurance] plan itself."

As to the first premise, Mr. Wallach suggested that "[o]nce [the United States commitment] has been accomplished, it will then be incumbent upon us to determine the best way to communicate, with total credibility, that fact." Mr. Wallach recommended:

the most authoritative of letters, signed by the most authoritative of persons, and addressed appropriately and/or the selection of an appropriate emissary who, with either such a letter or other documentation, or on the strength of his reputation, will communicate the commitment without ambiguity. It is highly probable that traditional channels (i.e., the State Department) will not be utilized.^{237/}

^{237/} Judge William P. Clark, friend of and former National Security Advisor to President Reagan, was thereafter selected as the "appropriate emissary." The purpose of Judge Clark's mission was to go to Iraq and communicate the strength of the White House commitment to the project.

As to the second premise, Mr. Wallach informed Mr. Rappaport that, when he dealt with commercial and financial institutions to get commitments for the \$400 million insurance package, he would have to perform a:

"balancing act" . . . to demonstrate, without ambiguity, the commitment of the U.S. government without revealing the access route utilized to accomplish it. . . . I will emphasize what I know is obvious to you: Just about everybody would like to know what access route is being used so that they can follow through the same tunnel and try to exercise it for their own purposes. As I'm sure has now been made clearly apparent to you, our own access is virtually without parallel . . . May I also add, and restate, that I am not interested in exposing in detail my own access routes to others. . . . It is not a matter of securing them from others, but seeing to it that they are not abused and so remain intact. [emphasis added]

The evidence, taken as a whole, indicates that Mr. Wallach continuously shared the details of the pipeline project's progress with Attorney General Meese until the project's demise. While it is impossible to reconstruct the conversations between these two men, the frequency and timing of their contacts and Mr. Wallach's memoranda to Mr. Meese and others on the subject support the conclusion that he repeatedly discussed the pipeline project in detail with Mr. Meese.

2. June 24, 1985 -- Roger Robinson Is Assigned

Immediately after Mr. Robinson's initial meeting with Messrs. Wallach and Rappaport, he went to work on his new assignment. By the next day, Tuesday, June 25, he had prepared an action memorandum for Mr. McFarlane requesting a prompt meeting between Mr. McFarlane and Craig A. Nalen, the President of OPIC, to impress upon Mr. Nalen the "seriousness of the foreign policy implications of this transaction," and to persuade OPIC to increase the \$100 million commitment for the insurance package to \$250 million. This memorandum reflected Mr. Robinson's perception of the priority and urgency which Mr. McFarlane attached to the project.

The memorandum indicated that Mr. Robinson was undertaking to "explore available options for contingency financing of the reported \$400 million gap" resulting from the Iraqi security demands of Bechtel. Mr. Robinson wrote that he had narrowed the options to what he thought was the most appropriate scheme -- persuading OPIC to increase its tentative commitment from \$100 million to \$250 million. Mr. Robinson also wrote that he had been "in touch periodically with Mr. Rappaport in New York who had reduced the aggregate need to \$350 million of which he personally will commit \$100 million." Mr. Robinson told Mr. McFarlane of the proposed OPIC commitment of \$250 million:

This amount would be unprecedented for OPIC and is only being considered for reason of highest level White House involvement. . . .

Craig Nalen is very concerned about OPIC stretching its mandate this far, and those at OPIC supportive of this approach and I agree that it is essential that you meet with Craig and his senior associates (along with myself) ASAP in an effort to put this over the top . . .

Again, I believe your personal involvement is imperative at this juncture if we are to persuade Nalen to grab the nettle in the national interest.

The recommendation for a meeting was approved after Mr. Robinson sent a note to Commander Paul B. Thompson, the Military Aide and Counsel to the National Security Advisor, in an effort to get direct and speedy access to Mr. McFarlane on the subject. Significantly, the note, dated June 25, 1985, read: "I may need your help securing this meeting. It is a project personally initiated by Bud on an urgent basis" A meeting with Mr. Nalen was scheduled for 11 a.m. on Thursday, June 27, 1985.

In preparation for the June 27, 1985 meeting with OPIC President Nalen, Mr. Robinson prepared a "rush" memorandum on June 27 with attached talking points for Mr. McFarlane. Also attached was an intelligence biography of Mr. Rappaport and an intelligence summary of the status of the pipeline project.

In the June 27 memorandum, Mr. Robinson reported to Mr. McFarlane that he had been "in continuous contact with OPIC since my meeting with Bruce Rappaport and his attorney Bob Wallach with the officials who will accompany Craig Nalen

[to the 11 a.m. meeting with Mr. McFarlane] -- Felton McLellan (Mac) Johnston, V.P. Insurance; and Bob Shanks, Vice President and General Counsel."

The report from Mr. Robinson to Mr. McFarlane said that he had worked out an "internal understanding" "between NSC and OPIC" that OPIC would increase their exposure from \$100 million to \$150 million (with a possible high of \$250 million) "together with a commitment from OPIC to assist Mr. Rappaport in obtaining adequate support from Lloyds and AIG for the remaining amounts."

This internal understanding between NSC and OPIC reflected a dramatic increase in OPIC's commitment to the pipeline project and came about, according to Mr. Robinson, as a result of the "McFarlane Factor," i.e., Mr. McFarlane's personal expression of interest in and support for the project.

Mr. Robinson also reported to Mr. McFarlane that Mr. Rappaport had met with the Chairman of AIG on June 26, 1985, and that AIG was prepared to make a \$50-100 million participation commitment "only if OPIC participation is assured" and if other conditions were met. Mr. Robinson ended his June 27, 1985 memorandum by summarizing his proposal for the insurance package and noting that the "NSC's involvement will have made a major difference and provided substantial comfort to both OPIC and private participation in the guarantee structure for the pipeline."

In the attached talking points Mr. Robinson suggested that Mr. McFarlane say, among other things, the following to Mr. Nalen in the 11 a.m. meeting:

- 1) I am appreciative of the time and attention OPIC is "willing to commit to this important issue of structuring adequate guarantees related to the Aqaba pipeline";
- (2) that I want to "underscore the priority the President and I attach to positioning the U.S. to respond positively and immediately to the Iraqis and Jordanians on the question of mitigating the Israeli risk to the pipeline"; and
- (3) "As you know, Israel will be a beneficiary of this transaction and, even beyond that, has stated forcefully its intention not to interfere with this pipeline going forward. I am particularly impressed by Prime Minister Peres' personal commitment in this respect";
- (4) "I think we can get over the goal line on this deal if we can secure at least a \$50 million increase in OPIC exposure . . .," and
- (5) "I understand that this will not be easy for OPIC as you face your own procedural obstacles . . . I want to hear your view of how these hurdles might best be crossed."
- (6) "Despite these essential OPIC concerns and the need to deal with them -- I feel we need to be able to give a firm indication of OPIC's willingness to commit at least \$150 million tomorrow, if at all possible."
- (7) "[S]tretching OPIC's capabilities on this one will make a major contribution to the President's peace process and be

a hard example of U.S. goodwill, particularly toward Iraq and Jordan, that we can reference in the future whether or not the pipeline is actually constructed. I deeply appreciate OPIC's willingness to work with us on such short notice."

It is clear from this memorandum and from all of the circumstances that Mr. Robinson's task was aggressively to obtain the OPIC financial commitment as part of overall United States government support for the pipeline project. This participation in the Aqaba pipeline project security issue by a senior NSC staff member was the direct result of the telephone call from Attorney General Meese to Mr. McFarlane.

As indicated above, Mr. Robinson also supplied an intelligence biography of Mr. Rappaport to Mr. McFarlane with his June 27, 1985 memorandum. The biography described Mr. Rappaport as a "shipping magnate and financier" whose "activities have at times been controversial." It summarized the known holdings of Mr. Rappaport in oil refineries, banks, and shipping companies. It also made reference to a 1976 dispute with the Indonesian state oil company, Pertamina, which it reported to have been ultimately settled with Mr. Rappaport being awarded a large settlement amount.

Finally, attached to the June 27, 1985 memorandum was an intelligence report on the status of the Aqaba pipeline project. It noted that a major obstacle to the construction

of the pipeline was the Iraqi fear of Israeli interference.

The memorandum stated that:

Iraq has been seeking some mechanism to protect itself from the [financial] consequences of any Israeli effort to interfere with the pipeline's operation. . . . Iraq has indicated that it desires significant U.S. participation to deter Israeli military attacks on the line.

Mr. Robinson's status report to Mr. McFarlane then set forth in some detail Bechtel's proposal for a standby indemnity fund that would be used to make interest payments on the debt financing if Israel were to interfere with the construction of the pipeline. The status report also discussed the proposed arbitration plan and the possibility of creating the indemnity fund from revenues from the sale of up to 300,000 b/d of crude oil. Finally, the status report noted that:

According to a reliable source Israel has provided a letter to the Western contractor promising not to attack the Jordanian line. The source also reports Israel has agreed in effect to post an indemnity bond, probably in the form of a guaranteed letter of credit, to assure payments to creditors for any Israeli caused damage to the pipeline which halts oil deliveries. In return, Israel will be guaranteed imports of crude oil or products, although not directly from Agaba. The oil would be exchanged for comparable supplies from other points of origin. [emphasis added]

In summary, two of the attachments to Mr. Robinson's June 27, 1985 memorandum - the talking points and the status

report on the pipeline - referred to an Israeli economic benefit from the pipeline project. The status report suggested that the Government of Israel would be receiving oil indirectly obtained from the pipeline in return for a written Assurance of non-aggression coupled with a letter of credit.^{238/}

**D. June 27, 1985 -- OPIC Participation
In Security Insurance Package**

Craig Nalen, President of the Overseas Private Investment Corporation since September of 1981, first learned of the Aqaba pipeline political risk insurance proposal in June 1985, when his staff informed him that Mr. McFarlane felt that a substantial commitment by OPIC to an insurance package

^{238/} At the time he was interviewed by the office of independent counsel, Mr. McFarlane indicated that he was never informed of a financial interest of Israel in the Aqaba pipeline. When later asked about those briefing materials before the grand jury, Mr. McFarlane [

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Mr. Robinson recalled learning after the first meeting with Messrs. Rappaport and Wallach that Israel was to benefit in some vague way by sharing in revenues from oil lifting in connection with the pipeline. Mr. Robinson's impression was that Israel was not interested in disrupting the pipeline project. Mr. Robinson also recalled that the entire project was "highly sensitive." He believed that he was not privy to all project details, including the details concerning the economic interest of the Government of Israel. Rather, he understood his role to be an operational one; he handled just a component of a sensitive operation.

would be in the interests of national security. When Mr. Nalen learned of Mr. McFarlane's interest, he requested that a meeting be arranged with Mr. McFarlane to confirm first hand the White House interest in the insurance package. The meeting was scheduled for Thursday, June 27, 1985.

The following is a summary of OPIC involvement in the Aqaba political risk insurance discussion up to the June 27, 1985 meeting of President Nalen with Mr. McFarlane.

As previously described, on May 2, 1985, Bechtel officials first asked OPIC for political risk insurance for the pipeline project financing obligations in addition to, as the parties had discussed earlier, insuring equity interests in the pipeline terminal. OPIC had known for some time from Bechtel that Iraq insisted that the obligations to make payments on their construction loans be forgiven if Israel disrupted the pipeline. OPIC also had known that the EXIM bank and other private and public potential financiers had flatly refused to provide such a forgiveness provision. But until May of 1985, no one had requested that OPIC assemble an insurance policy to cover Iraqi loan payments due during an interruption of the construction or operation of the pipeline.

From the May 2, 1985 Bechtel meeting with OPIC until May 20, 1985, no affirmative steps were taken by OPIC officials in responding to Bechtel's inquiry about political risk insurance. Then, on May 20 and 21, 1985, OPIC officials

met with Mr. Rappaport and began actively exploring political risk insurance for the Aqaba pipeline project.

It was contemplated from the beginning of the discussions among Mr. Rappaport, Mr. Kaplan and OPIC that OPIC would assume up to \$100 million of the risk and that private lenders and insurance companies would insure the balance of \$400 million. It was also clear even at those initial discussions that OPIC's "ability to assume this risk has been premised from the very beginning upon assurances that a commercially reasonable salvage package would be available to us to back up the security package" - i.e., that OPIC and the private insurance companies could turn to third parties for reimbursement in the event that a claim was made on the political insurance policy for damages to the pipeline.

It is apparent from internal OPIC documentation that the initial proposal by Messrs. Kaplan and Rappaport contemplated that the following groups would be the third parties responsible in equal portion to OPIC and the private insurers in the event of an insurance claim: "a) Bechtel and other owners of the terminal facility, b) a friendly country in the Middle East [Israel] using a creditworthy commercial intermediary, and c) the oil lifters."

The notion of a "salvage" package wherein third parties - including Bechtel - would reimburse OPIC in the event that OPIC paid a claim under the political risk insurance policy was troubling news to Bechtel. Mr. Thomason

reported to Mr. Nielsen in London on his attendance at two meetings on May 23, 1985 at OPIC at which both Mr. Rappaport and Mr. Kaplan were present. Mr. Thomason reported that the reimbursement scheme was Mr. Rappaport's proposal; that it was a "bothersome aspect" of the salvage package; and that Mr. Thomason was not certain of Mr. Rappaport's intentions. Bechtel quickly determined that they did not want to be a part of any effort to provide a "backstop" to OPIC or private insurance policies and made that fact known to Mr. Rappaport, his representatives, and OPIC.

On Thursday and Friday, May 30 and 31, 1985, OPIC Vice President Johnston had two meetings in London with Bechtel representatives, with Mr. Kaplan and Mr. Rappaport's employee, Mr. Raz. The meetings centered on the so-called "security package" that Mr. Rappaport was attempting to assemble with Bechtel. Mr. Johnston learned at those meetings from Mr. Nielsen that Bechtel still expected \$150 million in equity and loan insurance and loan guarantees in addition to a \$100 million commitment to the security package -- i.e. political risk insurance. Mr. Johnston noted in an internal OPIC memorandum that "Nielsen doesn't crack a smile when he says" Bechtel wants these extraordinary large dollar commitments from OPIC.

At that meeting, Mr. Johnston indicated that "\$50 million would be hard to come by." In Mr. Johnston's view, it was unlikely that OPIC could even agree to a political risk

insurance package of \$50 million, let alone \$100 million coupled with \$300 million from private sources that Bechtel and Mr. Rappaport were requesting. According to Mr. Johnston, Mr. Nielsen "was under the impression . . . that OPIC had more or less firmly given assurances that Bechtel's needs would be met." Mr. Johnston further reported that "I disabused him firmly of this notion."

Mr. Johnston did not realize how quickly the situation would change once Attorney General Meese spurred the National Security Advisor's interest in the Aqaba pipeline project. Within a month of the May 30 and 31 meetings, Mr. Johnston would attend a meeting at the office of National Security Advisor McFarlane at which OPIC would agree to attempt to make a much larger overall dollar commitment to the project.

1. June 27, 1985 -- Mr. McFarlane
and OPIC President Meet

After being assigned to the Aqaba pipeline matter on June 24, 1985, Roger Robinson spoke briefly with OPIC General Counsel Mr. Shanks at a formal dinner both men attended independently. Mr. Robinson told Mr. Shanks that the Aqaba pipeline project was important to the Middle East peace process because it represented a rare opportunity for a commercial venture involving cooperation among Iraq, Jordan and Israel. Mr. Robinson urged that OPIC do everything possible to support the pipeline project, including increasing

substantially the dollar amount of OPIC's participation in insuring against the risk of Israeli interference.

The day after the discussion with Mr. Robinson, Mr. Shanks met with Mr. Johnston to develop a recommendation for OPIC President Nalen. Messrs. Shanks and Johnston agreed that OPIC could not provide the full \$400 million of insurance itself, but perhaps could stretch its participation to \$150 million. They agreed that a convincing showing of strong NSC support would be necessary in order to obtain approval from OPIC's Board for such an extraordinary commitment. Both men also agreed, and told President Nalen, that a meeting with Mr. McFarlane to confirm that there was substantial high level support for the project was necessary before OPIC set out seriously to assemble a package including substantially greater OPIC participation. With Mr. Nalen's approval, Mr. Shanks thereafter called Mr. Robinson to request a meeting with Mr. McFarlane.

Messrs. Nalen, Johnston and Shanks met with Mr. McFarlane in Mr. McFarlane's office on June 27, 1985. At the outset of the meeting, Mr. McFarlane thanked the OPIC officials for meeting with him. Mr. McFarlane said that the pipeline project enjoyed strong support from the United States government, and was important to the national security interests of the United States. He urged the OPIC officials to do everthing possible to arrange the necessary insurance package.

The OPIC officials explained to Mr. McFarlane that OPIC could not, even by stretching its limits, do the job by itself, and that it would be very difficult to put the package together. They explained that many difficult details, including an adequate salvage package, would have to be arranged before the insurance could be issued. Nonetheless, after bringing out these caveats and understandings, the OPIC officials committed to make their best efforts to put the \$400 million package together. The OPIC officials left the meeting feeling that it was their job to arrange the requested insurance, and that they should keep Mr. Robinson advised of their progress.

Thereafter, OPIC increased its commitment to the insurance package to \$150 million, and set out aggressively to obtain private commitments for the necessary additional \$250 million. OPIC's efforts in this regard are described in detail below.

**2. July 11, 1985 -- Judge William P. Clark
Agrees to Represent "White House Dimension"**

In Mr. Wallach's June 25, 1985 memorandum to Mr. Rappaport, he spoke of the need to send someone important to Iraq, once the United States government's commitment to the insurance and security package was firm; someone who could "communicate the commitment without ambiguity." Judge Clark, friend of and former National Security Advisor to the

President, was selected for that role, and thereafter entered into a tentative retainer agreement with Mr. Rappaport.

The evidence indicates that it was either Mr. Robinson or Mr. McFarlane who recommended to Mr. Wallach that Judge Clark travel to Baghdad and represent the White House interest in the Aqaba pipeline project.^{239/}

In a brief telephone conversation following that recommendation, Mr. McFarlane informed Judge Clark that Mr. Wallach would be calling him concerning a pipeline project in the Middle East. According to Judge Clark, Mr. McFarlane requested him to consider attending a meeting that month in Baghdad as the representative of the "White House dimension" in the pipeline project. Mr. McFarlane told Judge Clark that he would be asked to make only this one trip, and indicated that the pipeline project was a means for the United States to bring greater stability to the Middle East. Mr. McFarlane added that the NSC staff and Mr. Wallach would give Judge Clark information concerning the project. Judge Clark agreed that, after receiving further information, he would make the trip if his schedule permitted.

^{239/} Mr. Robinson worked for Judge Clark during Judge Clark's tenure as the National Security Advisor to the President. Mr. McFarlane worked for Judge Clark when Judge Clark was Deputy Secretary of State, and came to the White House as Judge Clark's deputy in January, 1982, when Judge Clark became National Security Advisor to the President. Mr. McFarlane succeeded him when Judge Clark resigned from his position as National Security Advisor in October, 1984.

Soon after Mr. McFarlane's call, Judge Clark was called by Mr. Wallach and advised that he was not being asked to participate in the "commercial side" of the project, but instead would [

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] By the time of Mr. Wallach's telephone call, Judge Clark had already planned to attend a July 28, 1985 meeting in Baghdad unrelated to the Aqaba pipeline project. He advised Mr. Wallach that he was available, and they agreed on the terms upon which Judge Clark would participate in the project.

Judge Clark wrote Mr. Wallach a letter on July 11, 1985, confirming their agreement that Judge Clark would:

undertake the representation of Mr. Rappaport and National Petroleum Limited for the purpose of appearing on 28 July in Baghdad regarding an aspect of the Iraq/Aqaba project. . . . It is understood that Mr. Rappaport shall pay expenses for myself and one assistant in addition to a fee of \$500 per hour for all time expended. . . . In the interim, I shall confer with members of the National Security Council in preparation for our meetings.

On July 17, 1985, Mr. Wallach telexed Judge Clark, stating: "on behalf of Mr. Rappaport and myself, may I extend our deep appreciation to you for your willingness to participate in this important project." Mr. Wallach told Judge Clark that the date for the presentation in Baghdad was

not yet determined, but that Mr. Wallach would soon inform Judge Clark of it.

Judge Clark recalled being briefed by Mr. Robinson of the NSC staff on the project. He also recalled that he received the intelligence biography of Mr. Rappaport and glossy descriptive pamphlets on Mr. Rappaport's various businesses.

The Baghdad meeting did not occur that summer.^{240/} In fact, Judge Clark never attended a meeting in the Middle East as Mr. Rappaport's representative. Moreover, as Judge Clark informed the office of independent counsel, he quickly soured on the project and disassociated himself with it.^{241/}

^{240/} Although Judge Clark traveled to Baghdad on behalf of another client in early 1986, and discussed the Aqaba pipeline with highly placed Iraqi officials, he was not then associated in any way with Mr. Wallach or Mr. Rappaport.

^{241/} Before and after Judge Clark formally disassociated himself from the Aqaba pipeline project in late August 1985, Mr. Wallach sent him informational copies of letters and memoranda written to others involved in the project. One attachment to a letter dated July 30, 1985, and copied to Judge Clark, was a draft letter from President Reagan to His Excellency, President Hussein of Iraq. It appears that initially two letters had been drafted by Mr. Wallach for delivery by Judge Clark. The revised version of this letter, read as follows:

Dear Mr. President:

I have reviewed with great interest your progress on the proposed Iraq/Aqaba pipeline project. We believe this project offers an important opportunity for Iraq to diversify

(Footnote Continued)

Judge Clark's disenchantment with the Aqaba pipeline project resulted from his concern about the indiscreet and inexperienced actions of Mr. Wallach.^{242/} Specifically, Judge Clark was disturbed that his name was persistently used in Mr. Wallach's numerous written communications about the project. Judge Clark testified before the grand jury that he

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] Judge Clark also stated that Mr. Wallach was "far too optimistic" about the project:

[

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(Footnote Continued)

its oil export capabilities.

In this connection, I wish to introduce my close friend and associate William P. Clark who I understand . . . will be meeting with you and your associates in relation to certain aspects of the project. Bill Clark represents my interest in this matter, and I hope he can assist you in realizing this important undertaking for your country. I look forward to the continued improvement of our bilateral relations.

This letter was never completed.

^{242/} Judge Clark knew Mr. Wallach from his service as a California State Court Judge. Judge Clark's concerns about Mr. Wallach were coupled with grave reservations about the Aqaba pipeline project and doubts that United States involvement was politically appropriate.

Judge Clark communicated his concerns to Mr. Robinson, who agreed that Mr. Wallach's behavior was highly indiscreet. Mr. Robinson viewed Mr. Wallach as "a kind of a name dropper" who traded on his friendship with Mr. Meese to enhance his own stature. Mr. Robinson did not believe that Mr. Wallach was the kind of person who should be dealing with a sensitive subject.

Accordingly, with Judge Clark's consent, Mr. Robinson telephoned Mr. Wallach and informed him of these concerns. Mr. Robinson recalled [

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Mr. Robinson's recollection about the telephone call in late August 1985 is consistent with the documentary evidence. On Tuesday, September 3, 1985, Mr. Robinson called Judge Clark and spoke with Judge Clark's secretary, Jacqueline Hill. She prepared the following note for Judge Clark:

9/3
WC:

Roger Robinson called.

He did reach Wallach last week (prior to Wallach's trip) and indicated unequivocally and firmly that you, the WH, were not in a position that this should continue" Roger said he was very firm but did not alienate Mr. Wallach.

See ltr attached from Wallach.

The telephone note apparently was accompanied by a letter dated August 30, 1985, from Mr. Wallach to both Judge

Clark and Mr. Robinson. It was written and sent as Mr. Wallach was preparing for a trip to Amman, Jordan. In the letter referring to the recent telephone conversation with Mr. Robinson, Mr. Wallach wrote: "Under no circumstances will I indicate by name or by document [during my trip to Amman] any effort which the USG may allow to be part of the presentation at a subsequent meeting."

**E. July 13, 1985 -- Messrs. Wallach and Meese
Attend American Bar Association Convention
In England**

On Saturday, July 13, 1985, Mr. Meese and Mr. Wallach traveled from Washington, D.C., via New York City, to London, England, to attend the convention of the American Bar Association (ABA). On the airplane, Mr. Wallach had "lots of conversation" with Mr. Meese, "both serious and jovial,"^{243/}

^{243/} Before the trip to London, Mr. Wallach dined with Mr. Meese on Monday, July 8, 1985 "for about three hours," according to Mr. Wallach. The dinner followed a full day of activities by Mr. Wallach relating to the Aqaba pipeline project -- meetings with OPIC, with Mr. Kaplan, and with the AIG. Mr. Wallach's July 8 dinner with Mr. Meese also followed a July 4th weekend which Mr. Wallach had spent in part with Mr. Rappaport in Switzerland. With respect to a planned meeting with Mr. Greenberg of the AIG, Mr. Wallach noted in a July 9, 1985 memorandum to Mr. Rappaport that "concerning your inquiring regarding H.G. [Greenberg] ... my friend knows him well and I have a private message to communicate to him which should go a long way, if not completely, to conclude any personal hesitancy he may have expressed." In response to questions by the independent counsel, Mr. Meese speculated that the private message was simply a personal greeting.

(Footnote Continued)

according to a letter produced to the independent counsel which Mr. Wallach sent his daughters on July 26, 1985.

Mr. Wallach apparently spent the entire next day, July 14, 1985, with Mr. Meese in London. They visited Westminster Abbey and the Cathedral Church of St. Paul and dined together at the Middle Temple of the Hall of Inns. At each location, they participated in planned ABA events.

On Monday, July 15, 1985, Mr. Wallach accompanied Mr. Meese to a full day of ABA convention events, including a program on International Terrorism at the Grovesnor House, the hotel where they stayed.^{244/} The event-filled day ended with Mr. Wallach and Mr. Meese spending two hours together in the lounge of the hotel talking about a number of matters, including "the continuing activities at the Justice Department." Mr. Wallach opined in his letter to his daughters that, "I suspect I know more about the intimate workings of this Administration than probably any outsider in this country."

(Footnote Continued)

On Thursday and Friday, July 11 and 12, Mr. Wallach also had met twice with Mr. Robinson of the NSC staff.

^{244/} Mr. Rappaport maintains a flat at the Grovesnor House. The independent counsel does not know whether or not Mr. Wallach or anyone else used Mr. Rappaport's flat during the July 1985 ABA convention. Mr. Rappaport paid for Mr. Wallach's expenses, including air fare, on this trip to England.

Mr. Wallach had a two-hour run during the next morning, July 16, 1985, and spent the rest of the day on the "project," i.e., the Aqaba pipeline project.^{245/}

On July 17, 1985, Mr. Wallach breakfasted with Mr. Meese at the Institute of Judicial Administration, and upon returning to the Grovesnor House, helped brief him for a press conference. Mr. Meese also addressed a session of the convention. Mr. Wallach and he discussed the speech in advance, and Mr. Wallach "made a number of suggestions" to Mr. Meese, "all of which were accepted." Mr. Wallach, in his letter to his daughters, described his role in advising Mr. Meese as regards his philosophy as being "a narrow line between being a friend and seeking to be the alter ego."

Following the luncheon speech, Mr. Wallach accompanied Mr. Meese to a garden party at Buckingham Palace. That evening, Mr. Wallach and Mr. Meese drove together for one and one-half hours to Blenheim Palace to attend a dinner sponsored by the State Bar of California. During the drive, according to Mr. Meese, Mr. Wallach talked in some detail

^{245/} From other documentary and testimonial evidence, the independent counsel concludes that Mr. Wallach was assisting Mr. Rappaport at this time in the drafting of a memorandum of understanding for the business relationship between Mr. Rappaport and Bechtel. The memorandum was finalized at meetings attended by Mr. Wallach in London on July 16, 1985. Mr. Moriarty then met Mr. Rappaport in Scotland where the memorandum was signed by Mr. Moriarty and Mr. Rappaport.

about Mr. Rappaport. Mr. Meese stated that he could not recall any of the details of this conversation.

On Thursday, July 18, 1985, Mr. Meese attended events without Mr. Wallach. Mr. Wallach "spent the afternoon, or at least, an hour-and-a-half of it, to the 'project' with other people"

On July 19, Mr. Wallach accompanied Mr. Meese "on a round of receptions," including one at the House of Commons and one at Guild Hall. Mr. Wallach and Mr. Meese attended the last session of the ABA convention at Grosvenor house. They left after an hour and had dinner together along with others traveling with them.

While Messrs. Wallach and Meese were in London for the ABA convention, Mr. Wallach arranged for Mr. Meese to meet two of the OPIC officials who were in London working on the pipeline project, Messrs. Shanks and Johnston. The OPIC officials came to Grosvenor House to meet Mr. Wallach after attending a meeting at Lloyds of London concerning insurance for the pipeline. Mr. Wallach arrived at the first floor lounge with Mr. Meese, and introduced him to the OPIC officials. Mr. Meese chatted briefly with the OPIC officials, but the participants in the conversation stated that they do not remember a discussion of the pipeline project.

On Saturday, July 20, Mr. Wallach spent the day with Mr. Meese in Oxford. In the late afternoon, they visited

Windsor Palace, and later had dinner at an inn selected by Mr. Wallach.

Mr. Wallach urged Mr. Meese to "cut the trip short" and not visit Dublin or Edinburgh. Mr. Wallach felt that it was "important for his [Mr. Meese's] relationship" with the President and the Cabinet for Mr. Meese to return to the United States.

Mr. Wallach and Mr. Meese "came back [to the United States] together and had a very good conversation and time on the plane," including, according to his letter to his daughters:

rather serious discussions about the future of this Administration, policy vis-a-vis the Russians, the Middle East, and the operation of the Justice Department. Ed is quite clear that there is no one else with whom he can communicate in this way and I am quite candid in my responses to him.

When Mr. Wallach returned to Washington, D.C., he spent a considerable amount of time working with Mr. Kaplan and OPIC to assemble a "salvage" package -- a financial package to backstop and support the OPIC political risk insurance.

**F. August 8, 1985 -- Mr. Rappaport
Pays for Mr. Wallach's Services**

As stated earlier in this Report, Mr. Rappaport retained Mr. Wallach on May 21, 1985. Within two hours of being retained, Mr. Wallach telephoned Mr. Meese and obtained

Mr. Meese's commitment to contact Mr. McFarlane on Mr. Wallach's behalf about the Aqaba pipeline project.

In early August of 1985, Mr. Rappaport made a payment of \$150,000 for Mr. Wallach's services. According to Mr. Rappaport, Mr. Wallach requested that the \$150,000 be made payable to his financial adviser, Mr. Chinn.^{246/} A wire transfer of \$150,000 was subsequently made by Mr. Rappaport to Financial Management International, Inc. (FMI), Mr. Chinn's company.

The accounting records of FMI disclosed an August 8, 1985 entry of \$150,000 denominated "Consulting fee - Bruce Rappaport." The records also show that on August 14, 1985, the amount of \$150,000 was transferred by FMI to FMI's account at Bear, Stearns & Co. The \$150,000 was commingled with other FMI funds in the Bear, Stearns & Co. account.

Investigators for the office of independent counsel have been unable to further trace the \$150,000 payment sent by Mr. Rappaport to Mr. Chinn because of the commingling of the funds. However, there is no doubt that the money was intended to be paid to Mr. Wallach for his services. During an unsworn deposition of Mr. Wallach on September 23, 1987, Mr. Wallach was asked by his counsel during his interview:

^{246/} By the summer of 1985, Mr. Chinn was also Mr. Meese's money manager. Mr. Wallach had referred Mr. Meese to him in March 1985.

Q. Did you receive some compensation from Mr. Rappaport?

A. I did.

Mr. Meese's deposition testimony also indicated that the money was directed to Mr. Wallach. Mr. Meese testified that, when he was approached by Mr. Wallach on behalf of Mr. Rappaport, it was his understanding that Mr. Wallach had been retained as an attorney by Mr. Rappaport; Mr. Wallach either told this to Mr. Meese or it was clear from their conversation.

Moreover, in the fall of 1986, Mr. Wallach told Mr. Meese that Mr. Rappaport had compensated him for services rendered in an amount in excess of \$100,000. Mr. Meese testified that Mr. Wallach told him that he had directed Mr. Rappaport to "send the compensation directly to Mr. Chinn." Mr. Wallach then expressed his concern to Mr. Meese that "that might look bad to someone." It was Mr. Meese's understanding that the money was not due and owing to Mr. Chinn but was, in fact, compensation to Mr. Wallach. And, as Mr. Meese testified, Mr. Wallach "was somewhat apprehensive that . . . someone would think that there was something strange about it." 247/

247/ Mr. Wallach had a similar conversation with Mr. Rappaport in 1987, in which Mr. Wallach expressed concern about how the payment to Mr. Chinn might look to others. Mr. Wallach apparently made no mention either to Mr. Meese or to

(Footnote Continued)

Mr. Wallach did not report the \$150,000 as income on his 1985 federal income tax return. The fee went unreported until after the independent counsel's investigation of Mr. Meese commenced, and Mr. Wallach's financial and income tax records were subpoenaed by the grand jury.

After receipt of the subpoena, Mr. Wallach filed an amended U.S. Individual Income Tax Return for the year 1985 which included a statement that the 1985 return was being amended "to include income constructively received in 1985, but not actually received until 1986." The amount of additional income reflected by that statement included \$150,000 received as fees.

Mr. Wallach's subterfuge in connection with his financial dealings with Mr. Rappaport was not limited to the \$150,000 fee payment. Mr. Wallach also incurred expenses totaling approximately \$32,800. Although Mr. Rappaport reimbursed Mr. Wallach's expenses with a wire transfer, Mr. Wallach's law firm records indicated no such reimbursement from Mr. Rappaport. Rather, the reimbursement was entered in the accounting records in connection with a personal injury case being handled by Mr. Wallach entitled DeMartini v. State.

(Footnote Continued)

Mr. Rappaport that he failed to declare the income on his 1985 income tax return.

Thus, an examination of Mr. Wallach's law firm records revealed no direct reference to payments or reimbursements from Mr. Rappaport.

G. July 31, 1985 -- OPIC President Reports to Mr. McFarlane that Insurance Is Attainable

Following the June 27, 1985 meeting in Mr. McFarlane's office, OPIC officials raised OPIC's commitment to the "security package" from \$100 million to \$150 million, and aggressively pursued additional private financing for the so-called "security package." They met repeatedly with Mr. Rappaport's representatives, Mr. Wallach and Mr. Kaplan, and separately with private banking and insurance company representatives. They also held internal discussions and discussions with NSC staff members to determine the best mechanism to construct the security package.

Due to their aggressive efforts, by July 31, 1985, OPIC officials had secured an expression of interest from Citibank for a commitment of \$250 million to the security package. That commitment, coupled with OPIC's own commitment of \$150 million, enabled OPIC President Nalen to report to Mr. McFarlane on July 31, 1985, that he believed "that the necessary \$400 million will be obtainable".

However, OPIC Vice President and General Counsel Shanks emphasized to Mr. Robinson of the NSC staff, by an August 8, 1985 letter, that OPIC's "ability to assume this risk has been premised from the very beginning upon assurances

that a commercially reasonable salvage package would be available to us to back up the security package." By "salvage package" OPIC referred to a readily available fund of money from which the co-insurers (OPIC and Citibank) could obtain reimbursement in the event a claim was successfully made under the political risk insurance policy (otherwise known as the "security package").

Mr. Shanks also stated in his August 8, 1985 letter:

. . .[i]nitially, when we met on June 27th, all of us had been under the impression that at least a substantial portion of the salvage package . . . would have to be available in [a] form . . . that would be immediately available in the event of a claim. The salvage package, as initially contemplated, was to consist of [commitments] emanating, in equal portions, from: a) Bechtel and other owners of the terminal facility, b) a friendly country in the Middle East [Israel] using a creditworthy commercial intermediary, and c) the oil lifters.

As of August 8, 1985, however, OPIC had been advised that (1) Bechtel and the other potential terminal owners did not wish to be a part of this salvage package, (2) that "the friendly country [Israel], evidently for reasons of maintaining secrecy, may not be willing or able to arrange prompt salvage through an intermediary," and (3) the oil lifters could only pledge to create an escrow account from the proceeds of their lifting arrangements with Iraq, which, in turn, depended upon Iraq's good faith performance of its obligations.

Thus, as of August 8, 1985, OPIC and Citibank were prepared to provide the \$400 million insurance fund, but would do so only after first "establishing very good recovery prospects" -- i.e., a meaningful salvage package to support the insured risk.

Finally, after extensive negotiations between OPIC and Mr. Rappaport's counsel, on August 29, 1985, OPIC entered into an interim understanding for the "salvage package" with Mr. Rappaport. The arrangement entailed a letter of credit from Israel, a letter of credit from Mr. Rappaport and a sinking fund to be established by the oil lifters -- i.e., Mr. Rappaport. Mr. Rappaport insisted that the Israeli portion of the package be a prominent one; that Israel take a "first loss" position with an obligation to pay before recourse to Mr. Rappaport's letter of credit and the sinking fund. By August 29, 1985, OPIC had secured, among other things, a commitment from Mr. Rappaport, through his attorney, to post a \$75 million letter of credit.

Pursuant to the terms of the August 29, 1985 agreement between OPIC and Mr. Rappaport, Mr. Kaplan prepared a proposed letter of indemnity, as called for in the overall agreement, between the Government of Israel and the Government of the United States. Mr. Kaplan sent the draft, captioned "Proposed Letter of Comfort from the Prime Minister to the U.S. Government," to Citibank with copies to OPIC, Mr. Rappaport, and Mr. Wallach, on September 17, just two days

before a scheduled meeting between Mr. Rappaport and Prime Minister Peres in Israel. Mr. Kaplan noted that a copy of the proposed comfort letter might be provided to the Government of Israel on September 19, 1985.

These commitments by Mr. Rappaport eroded, according to OPIC representatives and the documentary evidence, shortly after they were negotiated when Mr. Rappaport traveled to Israel on September 19, 1985.

However, the apparent salvage package agreement between Mr. Rappaport and OPIC was negotiated just in time for a trip by Bechtel representatives to Amman and Baghdad for the presentation of their final proposal to the Jordanians and the Iraqis. A negotiated security package was a necessary component of an overall Bechtel package which had been Mr. Rappaport's responsibility to obtain. When the Bechtel representatives and Mr. Wallach traveled to Amman for meetings on September 1, 1985, they represented to the Jordanian officials that the security package was in place.

**H. September 1, 1985 -- Final Bechtel
Presentation to Joint Committee**

With a tentative agreement between OPIC and Mr. Rappaport in place, Bechtel prepared to make its best and final offer to the Joint Committee. In early September 1985, representatives of Bechtel and Mr. Wallach flew to Amman to present the Bechtel proposal. Following meetings in Amman, Bechtel official Ashraf Ghonima traveled on to Baghdad to

present the proposal to Iraq. In the documents presented to the two countries and during oral presentations to Jordanian officials, the security package was described as "inextricably interwoven" with the oil lift agreement.

In late August, Mr. Wallach had traveled to London, where he met with the Bechtel employees who were later to present the Bechtel proposal in Amman: Messrs. Moriarty, Ghonima, Cooper, and Nielsen. The purpose of these London meetings was to discuss the theme that Bechtel and Mr. Wallach would present in discussions with Jordanian officials. It was agreed that the purpose of the trip to Amman was to convince Jordan to advocate the project to Iraq. It was also agreed that Mr. Wallach would be introduced as the representative of the group that put together the security package.

On September 1, 1985, the group flew to Amman. The following day -- a Monday -- the Bechtel officers and Mr. Wallach met with Minister H.E. Hashim Al Khatib of the Ministry of Energy and Mineral Resources and the Deputy Minister, Dr. Hatib Badran. Mr. Moriarty began discussions by recounting the history of the project to demonstrate that Bechtel had satisfied each of the four conditions placed on the project by the Joint Committee. Mr. Wallach then described the security package in general terms, and pointed out what had been accomplished. Mr. Wallach characterized as significant the efforts by United States government agencies, including OPIC and the Export-Import Bank. As Mr. Wallach

later said in a telex to Mr. Rappaport, he also "emphasized that sometimes it is better to leave certain questions unanswered as to how all of this had been accomplished."

Mr. Wallach observed that there had been no public exposure of the project in terms of the security package, and "of all countries, Jordan understood the complications which such exposure could cause."

Finally, Mr. Wallach observed that, because the security agreement was linked to the oil lifting agreement, some confirmation of the 10 percent discount was necessary. At the meeting, the Minister avoided this request. After the meeting, however, Dr. Badran told Mr. Wallach that this subject could not be addressed "frontally" because Iraq could not be in open violation of OPEC price guidelines.

Following the meeting, which lasted all morning, Mr. Wallach and the Bechtel representatives had lunch with United States Ambassador Paul H. Boeker and the Chief of the Embassy's Economic and Commercial Section, Perry E. Ball. The Ambassador briefed the group on the Jordanian political scene.

The group met with Prime Minister Zeid Rifai the following morning, September 2, 1985. Mr. Wallach advised Messrs. Moriarty and Ghonima that he wanted to meet with the Prime Minister in private. [GRAND JURY MATERIAL DELETED] Bechtel documents confirm, that Mr. Wallach told Messrs. Moriarty and Ghonima that he had a classified message from the United States government for the Prime Minister of

Jordan. As Mr. Moriarty understood Mr. Wallach's role, Mr. Wallach was a private citizen who "has been asked to act on behalf of the US Government as a special representative and has been confirmed by the Senate. From time to time the Administration request [sic] him to carry out certain delicate informal diplomatic roles." In anticipation of such a meeting, Mr. Wallach had drafted the following resume, which Bechtel presented to the Prime Minister:

E. ROBERT (BOB) WALLACH

Graduate of University of California School of Law, Berkeley, 1958-Valedictorian.

- Classmate of Edwin Meese III; and Moot Court Partner-team of Meese/Wallach were States Champions. This was the beginning of a 27 year friendship involving regular close family and professional contact, from Mr. Meese's marriage, birth and raising of his children, his career as Governor Ronald Reagan's Chief aide, to the present.

Mr. Wallach was admitted to participate law-State of California, District of Columbia, Washington, D.C. and all Federal Courts including the U.S. Supreme Court.

- Office: San Francisco (27 years)
Washington D.C. (3 years)

Dean, Hasting Centre for Trial and appellate Advocacy Hastings College of the Law (University of California San Francisco).
Adjunct Professor of Law, Hastings as above.

Author, 2 legal texts and over 25 articles on legal subjects of law and trial tactics.

Presidential appointee to U.S. Advisory Commission on Public Diplomacy (vice-Chairman) renominated by the PRESIDENT, 8/9/85 Senate confirmation.

Counsel to Edwin Meese III, in the matter of his confirmation as Attorney [sic] General of the United States (1984-85).

Mr. Wallach is the designated representative of the security package participants. He has been involved personally in all private and public meetings which have occurred [sic] relating to the development of the package including meetings with representatives of the U.S. Government at its highest levels of involvement.

Although Mr. Ghonima vigorously disapproved, Mr. Wallach ultimately met the Prime Minister alone after a ten-minute audience with the Prime Minister. Mr. Wallach has asserted his fifth amendment privilege against self-incrimination, but a September 10, 1985 memorandum from Mr. Wallach to Mr. Rappaport set forth a detailed account of his meeting with Prime Minister Rifai.

According to Mr. Wallach's memorandum, after exchanging pleasantries with the Prime Minister, he told him that "there were some things [he] wouldn't say because [Wallach] understood that he might not want to know them." Mr. Wallach then explained how the security package had been arranged:

beginning with the first phone call [presumably from Mr. Meese to Mr. McFarlane], the meeting at the NSC, the unusual commitment taken by OPIC, the problem in obtaining any more of a commitment than had already been obtained (which was impressive) from Export-Import Bank and the fact that the U.S.G. was prepared to make its commitment even more visibly and personally known at a meeting involving Iraqi leadership if there was the proper commitment from them to the concept itself.

Prime Minister Rifai asked Mr. Wallach whether Israel would receive economic benefit. Mr. Wallach "answered him straight-forwardly, but giving him only as much information as seemed to satisfy him." The Prime Minister responded that this was "very sensitive and would have to be handled very carefully at all times."

Following the meeting with the Prime Minister, Mr. Ghonima traveled to Baghdad, where he presented Bechtel's proposal for the Agaba pipeline to the Government of Iraq. Mr. Wallach traveled to Geneva to discuss the Amman trip with Mr. Rappaport on Wednesday, September 4, 1985.

Within weeks of Mr. Wallach's journey to Amman, Mr. Rappaport reneged on his agreement to personally participate in the salvage package. As a result, while Bechtel awaited a response to its final offer from the Joint Committee in the Fall of 1985, Mr. Wallach redirected his efforts to now obtain United States financial support for the salvage package, as well as United States support for the insurance fund.

1. **September 7, 1985 -- Mr. Wallach
Returns to Washington, D.C.**

On Saturday, September 7, 1985, Mr. Wallach returned to Washington, D.C. Although their calendars and schedules reflect that for the next five days Mr. Wallach and Mr. Meese apparently met with each other at least five times socially and traveled together to California, Mr. Meese does not recall

talking with Mr. Wallach about his trip to Amman, Jordan or the status of the Aqaba pipeline project.^{248/}

On Thursday, September 12, 1985, Mr. Wallach provided Mr. Meese with a copy of a fifteen-page, single spaced memorandum to Mr. Rappaport dictated on September 10, 1985, which recounted in great detail his trip to Amman, Jordan. The cover memorandum to Mr. Meese that accompanied the memorandum to Mr. Rappaport was encaptioned "Meeting in Amman (Including Preparation)," and contained the message: "This is the project from this current moment, and then working backward to its full development. For your idle time."^{249/} Despite repeated opportunities for Mr. Wallach to

^{248/} Mr. Wallach's calendar shows "EMIII" at noon on Sunday, September 8, 1985. At noon on Monday, September 9, 1985, Mr. Wallach hosted a birthday lunch for Mrs. Meese at the Four Seasons restaurant in Georgetown. Mr. Meese also attended. That evening, a surprise party was held for Mrs. Meese. Mr. Wallach attended that event as did the Meeses and Mr. and Mrs. Howard Bender. Mrs. Meese was the co-chairman of the Ambassadors Ball which was held at the Washington Hilton Hotel in Washington, D.C. on September 10, 1985. Mr. Wallach had assisted Mrs. Meese and the MS Society by arranging for at least the following individuals and entities to purchase tables for \$5,000 each at the ball: Wedtech Corporation, Blake Construction Co., Inc., Jeffrey N. Cohen, and Nofziger and Bragg Communications. On Wednesday, September 11, 1985, Messrs. Wallach and Chinn lunched with the Meeses at the White House.

^{249/} Mr. Wallach provided a copy of the September 10 memorandum to NSC staff member Robinson, who was in the process of resigning from the NSC staff. On September 13, 1985, Mr. Robinson sent a copy of the memorandum to Mr. Teicher, another NSC staff member who had been peripherally involved in the Aqaba pipeline project.

discuss the events described in this memorandum with Mr. Meese, and the obvious importance of these matters to Mr. Wallach, Mr. Meese testified that he had no recollection of any such discussions.

On the same day that Mr. Wallach gave Mr. Meese the September 10, 1985 memorandum, Mr. Wallach joined Mr. Meese on an official trip to Los Angeles where Mr. Meese met with DEA officials, and with the U.S. Attorney's Office for the Central District of California. He also spoke at the Jewish National Fund at the Beverly Hilton Hotel. At that function, the Jewish National Fund Certificate of Appreciation was presented to Mr. Wallach's mother.

Mr. Wallach was in San Francisco from Friday, September 13, 1985, until his return to Washington, D.C. on Tuesday, September 17, 1985. His calendar shows the following entries: Wednesday, September 18 - "1:00 p.m. Israeli"; Thursday, September 19 - "11:00 a.m. Jay Kaplan; 5:45 Pissar - YPO."

IV. SEPTEMBER 19-25, 1985 -- PRIME MINISTER PERES' LETTER AND MR. WALLACH'S MEMORANDA TO ATTORNEY GENERAL MEESE

Records obtained from Mr. Rappaport's Geneva files show that he departed for Tel Aviv, Israel, on September 19, 1985, and met at 4:00 p.m. that afternoon with Prime Minister Peres. These records also show an 11:00 a.m. meeting the following morning, September 20, 1985, with Minister of Economic Planning Yaacobi.

A September 19, 1985 memorandum marked "PRIVATE AND CONFIDENTIAL" and "TOP SECRET"^{250/} from Mr. Rappaport to the Prime Minister informed him of the status of the Aqaba pipeline project and of the specific security agreement and salvage package proposals then under consideration. Mr. Rappaport wrote of the need for Israel to agree to a "Letter of Comfort" which would give assurance that Israel would make available as much as \$150 million as security in the event of an arbitration panel's determination of "an overt act of aggression by Israel which is the proximate, direct, and immediate cause of a cessation of construction or operations of the project."

Mr. Rappaport stated in this three-page memorandum to Mr. Peres that:

OPIC's terms for salvage remain, in my opinion, harsh. They can perhaps be softened if you raised your concern over them with President Reagan during your forthcoming trip.

Included with this memorandum was a proposed Security Agreement, a proposed Arbitration Agreement, an August 5, 1985 letter from OPIC President Nalen to Mr. Kaplan stating OPIC's interest in an insurance "security package," and a signed letter agreement of August 29, 1985, from OPIC to

^{250/} This memorandum was also obtained from Mr. Rappaport's files in Geneva.

Mr. Kaplan setting forth the mutually agreeable "salvage package" terms between Mr. Rappaport and OPIC.

The independent counsel has concluded that Mr. Rappaport traveled to Israel to obtain the agreement of the Government of Israel to its commitments under the security package presented to OPIC and the Joint Committee. Pursuant to this proposed package, Israel would execute a Letter of Comfort to the United States government agreeing to deposit \$50 million in a New York bank subject to any claim by OPIC in the event of a claim against OPIC based on Israeli aggression. Israel would also agree to pay as much as \$100 million in additional funds if the salvage package was insufficient to cover OPIC's liability for a claim. Finally, Israel would enter into an arbitration agreement.

Mr. Rappaport did not leave Israel with the commitments he was seeking. On the day of Mr. Rappaport's meeting with the Prime Minister, September 19, 1985, Prime Minister Peres drafted a handwritten letter to Attorney General Meese on personal bond stationery with the Hebrew letterhead of the Prime Minister.^{251/}

^{251/} The letter as quoted in the text contains minor spelling corrections. Despite overwhelming evidence that he obtained this letter in Israel, Mr. Rappaport told office of independent counsel investigators that he had not discussed the letter with Mr. Peres. He also indicated that he had no recollection of having seen the proposed "Letter of Comfort," which had been attached to his memorandum to the Prime

(Footnote Continued)

Dear Mr. Meese -

Excuse my Hebrew letter-head I could [not] find at home the proper english one.

I am following with great interest the projected pipeline from Iraq to Jordan, as a possible additive to introduce economic consideration to this troubled land. Apparently an Israeli guarantee may help to pave the way to the construction of this p/l.

I would go a long way to help it out. But then discretion is demanded on our part.

I shall be in the USA in the middle of October, and I intend to talk it over with George Shultz, for whom I have the highest regard.

Considering the short while of my staying in Washington, I believe [it] may be of great help, if George will be informed ahead of time.

I shall appreciate your good office in this respect. I have asked my friend Bruce and Bob to let you know the whole story, and I shall depend on your judgment about the best way to handle this matter.

With many thanks

Shimon Peres

Jerusalem 19.9.85

This letter was hand-delivered to Mr. Meese by

Mr. Wallach some time on or after September 25, 1985.

(Footnote Continued)

Minister. A copy of the September 19, 1985 letter from Prime Minister Peres to Attorney General Meese was obtained from Mr. Rappaport's files in Geneva.

In a memorandum dated September 25, 1985, from Mr. Wallach to Mr. Meese, Mr. Wallach explained the circumstances under which he had received the letter for delivery to Mr. Meese:

On Thursday, [September] 19th, late in the day, I received a phone call from Geneva requesting that I travel to that city with an effort to be there on the immediately following Saturday and Sunday [September] 21-22. I was cryptically advised that there was a written message that I was to transmit back to Washington, to an unnamed person, and additional information to be received directly in person. In a subsequent phone conversation the following morning, separate and apart from the original conversation, I was advised that the message-letter was directed to you.

If accurate, it would appear that Mr. Rappaport, while in Israel, contacted his offices in Geneva on September 19, 1985, and caused a telephone call to be placed that day from Geneva to Mr. Wallach.^{252/} Thereafter, on September 20, 1985, Mr. Wallach was "advised" by someone (presumably from Geneva or Israel) that the letter was directed to the Attorney General.^{253/}

^{252/} Mr. Wallach wrote that the call came "late in the day". The time difference between Washington, D.C. and Geneva in May is six hours. On September 19, 1985, the last calendar entry on Mr. Wallach's calendar reflected that he was scheduled to meet with Mr. Rappaport's French lawyer Sam Pizar at 5:45 p.m.

^{253/} On September 20, 1985, Mr. Wallach's calendar entry showed a 7:10 a.m. meeting with Mr. Meese. Mr. Meese's schedule for that day also reflected a scheduled meeting with Mr. Wallach.

On the evening of Friday, September 20, 1985,

Mr. Wallach traveled to Geneva to obtain the letter from Prime Minister Peres to Mr. Meese. As he later wrote to Mr. Meese:

I left for Geneva Friday evening [September 20, 1985] and arrived there Saturday morning [September 21, 1985]. That evening I spent time at dinner at B.R.'s [Mr. Rappaport's] home and met with him in his study. At that time I was shown, and received, the letter which is attached to this memorandum, the contents of which I have already made known to you. His specific request was that the P.M. [Prime Minister] of the friendly country [Israel] be advised, in advance of his departure for his scheduled meeting, of the attitude of the U.S.G. towards this project, and the steps which can be taken to both accelerate and implement the fruition of this project. . . .

The P.M. is entitled to a response before he embarks upon his trip. If there is to be no greater emphasis by the USG upon the accomplishment of this project that has thus far taken place, (for whatever reason that provides the inhibition), the letter should be returned to the P.M. and become a non-document. (This has been requested).

Mr. Wallach returned to the United States on

September 24, 1985, after meeting with Mr. Rappaport on three separate occasions, according to a memorandum to the file dictated by Mr. Wallach.^{254/} The following day, September 25,

^{254/} Mr. Wallach's file memorandum also indicated that he had breakfast with Ambassador Max. M. Kampelman on September 23, 1985 in Geneva. A brief memorandum captioned "re: Bruce Rappaport" reported a discussion, apparently at that breakfast, concerning the fact that the Prime Minister was "wary" of people like Mr. Rappaport. Mr. Wallach wrote that Mr. Kampelman told him that "he [presumably Prime Minister

(Footnote Continued)

1985, Mr. Wallach dictated two memoranda to Mr. Meese, which explained the circumstances under which Mr. Wallach had obtained the letter.

Sometime on or after September 25, 1985, Mr. Wallach personally delivered the Peres letter and the two memoranda to Mr. Meese. Mr. Meese professed ignorance as to why the letter from Prime Minister Peres was addressed to him, but apparently did not raise any question at the time. He knew in advance from Mr. Wallach the contents of the letter, and the fact that it was addressed to him. Mr. Meese acknowledged that it was extraordinary for him to receive a personal letter from a head of state; he could recall only one other letter addressed to him from a foreign head of state, a thank you letter from Prime Minister Thatcher of Great Britain.

(Footnote Continued)

Peres] knows him [presumably Mr. Rappaport] but not that well" He concluded his memorandum with the note that Mr. Kampelman "urged me to be cautious about protecting EMIII on this."

Mr. Kampelman remembered seeing Mr. Wallach in Geneva about six times over the years and remembered being there during September 1985. His calendar also reflected a dinner with Mr. Rappaport on September 24, 1985. Mr. Kampelman did not specifically recall this breakfast with Mr. Wallach or the reported remarks. He did recall that Mr. Wallach had spoken enthusiastically, though cryptically, of the pipeline project. However, Mr. Kampelman did not recall any reference by Mr. Wallach to an Israeli interest in the pipeline project. Mr. Kampelman also remembered that, on more than one occasion, he had warned Mr. Wallach to avoid using Mr. Meese's name in order to avoid any appearance of impropriety.

The independent counsel has been unable to determine if Prime Minister Peres addressed the letter to Mr. Meese on his own initiative, or if he was requested to do so.^{255/}

The independent counsel also has attempted unsuccessfully to determine the answers to the following questions raised by Mr. Peres' letter to Attorney General Meese: (1) What was meant by the statement that the Aqaba pipeline was a "possible additive [sic] to introduce economic consideration to this troubled land"? (2) What was meant by the statement that Mr. Peres would "go a long way to help [the pipeline project] out"? (3) What was the "whole story" that Mr. Peres' "friend Bruce and Bob" (Bruce Rappaport and Bob Wallach) would be telling Mr. Meese?

Mr. Wallach asserted his fifth amendment privilege and refused to give any evidence on the subject of the letter. Mr. Rappaport reneged on a cooperation agreement with the independent counsel, and refused to participate in any additional interviews with the independent counsel beyond the initial interview wherein he claimed a general ignorance of

^{255/} During the second part of Mr. Rappaport's initial unsworn interview, he volunteered that he had learned (presumably between the first and second parts of the initial interview) that it was the Israeli Ambassador to the United States who had advised Mr. Peres that Mr. Meese was the appropriate person to receive the letter. The Israeli ambassador to the United States in 1985 was the Honorable Meir Rosenne.

the letter. Mr. Peres' testimony is also presently unavailable to the independent counsel.

As noted previously, Mr. Wallach delivered Mr. Peres' letter with two memoranda. In the longer of the two memoranda, Mr. Wallach complained that OPIC was "apply[ing] traditional considerations and approaches to a rather untraditional project." He lamented that the United States' commitment to the project started out with a "rapid beginning," and now appeared to be fading away, primarily for bureaucratic reasons. Mr. Wallach wrote that:

As you know, this all commenced with the arrangement made by you for a meeting with [Bud McFarlane]. At that time, there was a very firm and unequivocal commitment by him to the accomplishment of this project on an accelerated basis. You will recall that immediate arrangements were made to work with a member of his staff, a meeting was accomplished by him with the senior person at OPIC, representations were made to the effect that strong encouragement would be provided to OPIC to facilitate this project, and that a way would be found to "crack the safe."

There was a rapid beginning, with OPIC moving from a tentative \$100 million to a firm commitment of \$150 million. There was direct communication by [Roger Robinson] of the NSC staff with OPIC, although he indicated that there would be no further effort by NSC to influence the established and traditional banking considerations of OPIC.

Since that time, there has been a great deal of energy invested but, in my judgment, not a lot of progress. . . .

My observation is as follows: I believe we have taken what is essentially a politically motivated economic opportunity

and tried to "cram" it into the traditional perimeters of a financial undertaking that would be applicable to the private sector. [Each effort at accomplishing the project through discussions with private banking interests] seems to involve the ever-increasing risk of ultimate exposure of the underlying project itself. . . .I am uncertain, but I believe that [there] is a rather continuous reference to the "reason" the friendly country [Israel] would not violate the security provision.

As I have indicated in previous memos, I also believe that there is a subliminal, and often obliquely stated impediment to the vigorous momentum that is required for this project. Mainly, the fact that [Bruce Rappaport] is going to "make a lot of money" on this project. . . . However, in fairness to him, . . . we all recognize that there would be no progress to this point had he not been able to obtain the security package which, involves the never-to-be-stated but fully understood quid pro quo which helped to produce that commitment by the friendly country [Israel].

It is my belief, and therefore the basis of my recommendations to be made in a moment, that the currently scheduled visit of the P.M. is the moment at which the principals should be brought together, at the highest possible level, to conclude this package. [emphasis in original]

Mr. Wallach also made specific recommendations which clearly reflected that Mr. Rappaport had concluded that Israel was unable on its own to place significant funds on deposit to support the OPIC/Citibank insurance fund, and "would need some assurance-guarantee that such a step would not impair its financial flexibility, international credit, or domestic economic stability." Mr. Wallach, therefore, was recommending that the "convoluted, and so far largely unsuccessful, effort

to provide private sector solution" be abandoned and the "USG find a way (beyond the range of my knowledge) to allow [Israel] to effectively provide a guarantee of the \$400 million . . . on a direct basis [e.g. by direct grants of U.S. funds]." [emphasis added]

Mr. Wallach wondered if there was "a precedent for this kind of undertaking", and stated that "[t]he issue, at least as it appears to me, is whether this can be accomplished without current involvement of outside branches of government (particularly the Hill)."

After recounting his September 21 and 22 trip to Geneva in his five-page memorandum to Mr. Meese, Mr. Wallach wrote:

I was also provided with other information, orally, and which I will place in memo form for my own files and make available as you determine it to be appropriate.

Presumably this is a reference to the second, two-page "PERSONAL AND CONFIDENTIAL FOR YOUR EYES, ONLY" memorandum of the same date that Mr. Wallach addressed to Mr. Meese. Mr. Wallach concluded his five-page memorandum with a second reference to the separate memorandum:256/

256/ Mr. Wallach also sent this five-page memorandum, and a copy of the letter from Prime Minister Peres to the staff of the NSC. The heading of the five-page memorandum, which
(Footnote Continued)

I am preparing, as indicated, a memorandum for my own files on the other matters discussed with B.R. However, I will communicate orally the contents of that memorandum and await your advice as to its further use. In my judgment, the contents substantially demonstrate the credibility and relationship of B.R. to the friendly country [Israel], thus adding conclusive weight to his representations.

The second Wallach memorandum to Mr. Meese began by stating his reluctance to reduce to writing that which he was about to reduce to writing. He wrote:

I hesitate to provide the following information to you in memorandum form. I'm constantly torn between my own feelings of privacy and the need to provide you with information in a form which will expedite communication. The following are specific items of information which B.R. [Bruce Rappaport] provided to me.

In the first paragraph following this introduction, Mr. Wallach spoke of information Mr. Rappaport had given him concerning the emigration of Soviet Jews, and stated that a prominent Jewish figure had been advised by General Secretary

(Footnote Continued)

identified the date and the person from and to whom it was sent, was obliterated from the NSC copy of the memorandum. Someone obviously photocopied the memorandum in such a way as to redact this identifying information. The independent counsel has been unable to identify who obliterated the heading. Mr. Wallach is unavailable as a witness, having asserted his privilege against self-incrimination.

Mikhail S. Gorbachev to transmit a message to Prime Minister Peres that the Soviets would allow emigration of Soviet Jews to Israel only. The remaining paragraphs of the memorandum read verbatim as follows:

2. B.R. has been financing private polls for quite a long time in Israel on behalf of labor-Peres. They demonstrate an increasing strength for labor and the high probability of elections, no later than March 1986.

3. He confirmed the arrangement with Peres to the effect that Israel will receive somewhere between \$65-\$70 million a year for ten years out of the conclusion of the project. What was also indicated to me, and which would be denied everywhere, is that a portion of those funds will go directly to Labor. [Labor is typed throughout the memorandum with a lower case "l" and at this point in the memorandum someone penned over the "l" to make it a capital "L."]

For both this information, and the emigration above, the obvious rationale needs to be kept well in mind. There is a need to provide Israel with an increasing flow of Ashkenazy Jews (from the Soviet Union) to help balance the influx of Sephardic-Oriental Jews who have a natural affinity and affiliation with Likud. From the standpoint of American interests, the advantage is evident.

4. B.R. indicates that Peres emphatically indicated that the release of Weir was as a result of the efforts of the State of Israel, and no one else. He indicated that they would also arrange for the release of the remaining six. There is a feeling that the U.S. "owes" and that the accomplishment of this project, as outlined in my memorandum, is appropriate. It should be emphasized that things are seen in a totality of the relationship but that in this instance, they are uncertain and a bit frustrated as to why the U.S.G. has not more

directly facilitated the accomplishment of this project when it is so obviously in the interest of everyone involved.

5. There is to be a OPIC meeting in Vienna October 6. B.R. intends to send his representative (former Minister of Energy Calderon of Venezuela -- who is now a member of his Board of Directors and an employee) to Vienna to meet with Minister Taki [sic], the Iraqi who is in charge of their oil entity (see my previous memorandum). Apparently these men know each other very well. At the time, Bruce intends to communicate to Iraq, through Calderon, the private banking proposal which he is prepared to put together which would provide funds to Iraq as indicated in my previous memorandum.

6. The prime minister is very sensitive to the letter which he sent. He wants it returned if there's not going to be some kind of appropriate response when he comes to Washington. That appropriate response would clearly be a meeting with the President and with Bud McFarlane which would include this project. As you saw from the letter, he also includes Secretary of State Schultz [sic] and I have expressed myself as to whether or not that is appropriate. In any event, they apparently find it hard to understand why McFarlane is not able to communicate to Iraq, and to S.H. [Saddam Hussein] the importance of this project.

N.B. I have explained to them the reluctance to become involved in the promotion of a private venture. Of course, they don't see it in that light, but rather in the total context of the geo-politics of the Middle East.

7. There was a suggestion that I call the P.M. of the middle country [Jordan] to see what is happening and see if I could prod him along. I indicated I did not think that was appropriate at this moment. I also told him that I had had a brief and private conversation with Bill Casey and had invited me to meet with him in a non-discussion. The trip to Geneva intervened.

The independent counsel attempted to interview Mr. Wallach about the representations made in this memorandum; however, he continued to assert his privilege against self-incrimination. The office of independent counsel was able to interview Mr. Rappaport about the statements made by Mr. Wallach in the memorandum, but only in an unsworn initial interview.

As to the first paragraph concerning emigration of Soviet Jews to Israel only, Mr. Rappaport stated in his initial interview that he "could have discussed this with Wallach" but that his discussions with Mr. Wallach were expected to be held in confidence.

As to the second numbered paragraph concerning the assertion that Mr. Rappaport had financed private polls in Israel for the Labor Party and for Prime Minister Peres, Mr. Rappaport did not deny this assertion but simply stated that "Peres never intended not to execute the end of the agreement." That is, according to Mr. Rappaport, Mr. Peres intended to fulfill the agreement entered into on the formation of its government and continue the coalition government as planned on its formation.^{257/}

^{257/} Mr. Meese's present recollection of the political climate at the time in 1985 is consistent with the memorandum and at odds with Mr. Rappaport's present recollection. Mr. Meese stated in a deposition on November 22, 1987, that "my recollection of the political situation was that things were
(Footnote Continued)

As to the fourth numbered paragraph which included the discussion of the Israeli assistance in the release of the hostage the Reverend Mr. Weir and the Israeli feeling that "the U.S. 'owes' and that the accomplishment of [the pipeline] project, as outlined in my memo, is appropriate," Mr Rappaport said in his interview, "I might have told Wallach that, but he exaggerates."

The fifth numbered paragraph included a discussion of an upcoming OPIC meeting and a statement that Mr. Rappaport's representative, Mr. Calderon, would explain to Iraqi government officials the private banking proposal which Mr. Rappaport was prepared to put together as an insurance option to be presented to Iraq. After the initial interview by the independent counsel, Mr. Rappaport's lawyers produced a letter dated October 2, 1985, from Mr. Calderon to an Iraqi government official in which Mr. Calderon referred to their meeting of the day before and indicated that the security package appeared to be the only obstacle to the Aqaba pipeline project. In a preliminary and perhaps related statement in the letter, Mr. Calderon said, "I will contact you in 15 days reference funding (banking syndicate)."

(Footnote Continued)

going pretty well for Peres and that there was a thought that Peres might call for new elections so that he could earn the presidency in his own right rather than as a result of a coalition government. There had been a lot of talk of that, whether that was true or not. . . ."

With respect to the sixth numbered paragraph, in which Mr. Wallach reported on Prime Minister Peres' concern about his hand-written letter, including his desire that it be returned if no appropriate response was forthcoming in Washington, D.C., Mr. Rappaport was asked if he made any such statements to Mr. Wallach. Mr. Rappaport responded that "there could have been but I make no promise."

When questioned about the statements in the third numbered paragraph in which Mr. Wallach reported to Mr. Meese on arrangements with Mr. Peres for the payment of money to Israel and the Labor Party, Mr. Rappaport at first stated that there was an understanding whereby Israel would receive oil, but that there was never a final agreement between Israel and Mr. Rappaport that this would be done for the reason that the Joint Committee never accepted the pipeline proposal.

Mr. Rappaport then stated that he had estimated that he would gain a profit of approximately \$200 million a year through his discounted oil lift agreement, and that "a certain portion" would be paid to Israel. While Mr. Rappaport would not tell investigators "what [he] was going to do with the [\$200 million a year]," he did say that it was his intention to donate a certain portion of the \$200 million either as money or oil to Israel. Although Mr. Rappaport stated that he did not know where Mr. Wallach got the figure of \$65 to 70 million as being the portion that would go to Israel,

Mr. Rappaport conceded that he had intended on giving Israel over one-third of his profits.

Mr. Rappaport told investigators that he felt Israel needed financial help and that he wanted to provide Israel with "fair compensation" in return for its promise not to interfere with the pipeline project. Yet, Mr. Rappaport stated that Israel did not make receipt of the oil or cash a quid pro quo for its representations.

As to the second sentence in the third numbered paragraph concerning money going directly to the Labor Party, Mr. Rappaport denied that any money was promised to the Labor Party. "He [Mr. Wallach] did not hear that from Bruce Rappaport" and "it was out of the question," according to Mr. Rappaport. Mr. Rappaport insisted that payments to the Labor Party would have been stupid and simply could not have "been hidden." He described himself as a "proud Jew" who had given generously to Israel, who loved Israel, who had fought there, and who would contribute money to Israel. He also said that, while it was obvious that he supported Mr. Peres and believed that there was no question but that the Labor Party was good for Israel and the United States, Mr. Wallach "invented the Labor portion reference" in his memorandum of September 25, 1985.

The independent counsel has attempted, thus far unsuccessfully, communicating through diplomatic channels, to obtain an interview of now Foreign Minister Peres. The

independent counsel also asked Mr. Peres if he would at least provide written answers to written questions which were sent to Mr. Peres through diplomatic channels. As of the date of the filing of this Report, the independent counsel has not received answers to written questions. The independent counsel deferred any effort to obtain interviews of other Israeli government officials until a final response is forthcoming from Mr. Peres.

The independent counsel has determined that the direct and circumstantial evidence support the following conclusions:

1. Mr. Rappaport traveled to Israel on September 19, 1985, and discussed with Prime Minister Peres and Minister Yaacobi the Aqaba pipeline project and the need for a security and salvage package.

2. Mr. Rappaport sought the Government of Israel's agreement to specific proposals, including:

- (a) a proposed Arbitration Agreement, and
- (b) a proposed "Letter of Comfort" to the United States government wherein Israel would
 - (i) agree to place on deposit \$50 million in a New York bank to be available immediately to OPIC in the event of a claim, and

(ii) promise to pay as much as an additional \$100 million over four years if the other funds in the salvage package were insufficient to cover an OPIC loss under a claim.

3. Mr. Rappaport learned on September 19, 1985, that Israel would not accept the Arbitration Agreement and would not make any firm financial commitment to the security and salvage package. Instead, Mr. Peres wrote a letter to Mr. Meese setting the stage for further discussion of the desired "Israeli guarantee" for the pipeline project with United States government officials, including Secretary of State George Shultz.

4. Mr. Rappaport contacted Mr. Wallach indirectly about the Prime Minister's letter on September 19, 1985, the day it was written, and asked Mr. Wallach to travel to Geneva as soon as possible to receive it for hand delivery to Mr. Meese.

5. The two-page, September 25, 1985 memorandum from Mr. Wallach to Mr. Meese reflected conversations Mr. Wallach had with Mr. Rappaport during his September 21-24 trip to Geneva.

6. Mr. Wallach's memorandum emphasized the importance to the United States of a Labor Party government in power in Israel, and argued that the United States should further support the pipeline project because of the obvious

economic benefits it would bring to the Government of Israel and the Labor Party.

7. Mr. Rappaport conceded to the office of independent counsel that all of the subjects which Mr. Wallach recounted to Mr. Meese in his "confidential" September 25, 1985 memorandum may have been discussed or were discussed in his conversations with Mr. Wallach, except a payment to the Labor Party from pipeline profits.

8. Given all of the circumstances, the evidence demonstrates Mr. Wallach's written account of his conversation with Mr. Rappaport probably was an accurate recounting/retelling of the conversation. The extreme sensitivity of the subject matter attests to the accuracy of the recounting. Public disclosure of the information, whether true or false, would surely have embarrassed Israel and jeopardized the entire pipeline project. Mr. Wallach had no reason to give Mr. Meese inaccurate information about the details of his conversations with Mr. Rappaport, unless, of course, he felt that such an embellished or fabricated account of the conversation would somehow enhance his own stature with Mr. Meese or that such a false account would impress Mr. Meese.

**A. Mr. Meese's 1987 Statements Regarding
The Two-Page September 25, 1985
Memorandum from Mr. Wallach**

The independent counsel first interviewed Mr. Meese concerning the Aqaba pipeline matter on October 29, 1987. A statement of that interview was prepared based upon the notes of the independent counsel staff investigators present at the interview. Additionally, on November 22, 1987, the oral deposition of Mr. Meese was taken under oath in the offices of the independent counsel. Mr. Meese was represented by counsel at both the interview and the deposition. Mr. Meese gave the following answers to the following questions during the deposition:

Independent Counsel: Upon receipt of that memorandum, that letter from Mr. Peres in September, and receipt of the memorandum from Mr. Wallach dated September 25, 1985, what was your understanding as to what Mr. Peres was willing to do? Was it your understanding that he was willing to give the assurances that Mr. Rappaport was seeking that they would not interfere with the construction of the pipeline in a hostile or military fashion?

Mr. Meese: Yes, that was my understanding.

Independent Counsel: And was it your understanding either from the letter from Mr. Peres or from Mr. Wallach's memorandum of September 25th or from conversations with Mr. Wallach as to why it was that the Israeli government was willing to take that position?

Mr. Meese: My understanding was that it was financially beneficial to Israel for them to do this.

Independent Counsel: In what respect?

Mr. Meese: And that they would be receiving money from the pipeline project in some way.

Independent Counsel: What was your understanding as to how they would be receiving money or what money they would be receiving?

Mr. Meese: It was my understanding that they would be receiving money out of the profits of the pipeline project and that they would benefit from it in that way.

Independent Counsel: Now would this be the Israeli government and/or a part of the Israeli government, the Labor party?

Mr. Meese: Well, in the -- I don't have a detailed recollection that is that extensive but the 25th of September, 1985 memorandum from Mr. Wallach talks about receiving information from Mr. Rappaport that there had been an arrangement with Peres to the effect that Israel would receive something between \$65 and \$70 million a year for ten years out of the conclusion of the project and that a portion of those funds would go directly to the Labor Party.

Independent Counsel: Was that your understanding in September, 1985 that that was the arrangement?

Mr. Meese: Again I can't recall specifically but that certainly would be consistent with my understanding and would explain why Mr. Peres was personally interested.

Independent Counsel: Do you have any specific recollection of Mr. Wallach telling you of the Labor party's interest or financial stake in this operation?

Mr. Meese: I have a general recollection but even as we sit here now I don't know how that was all going to be achieved.

Independent Counsel: As to how they were actually going to receive the funds?

Mr. Meese: Right.

Independent Counsel: You just had a general recollection that they were going to receive the funds?

Mr. Meese: Well, I have a general recollection that the Labor Party was very much interested and what I read in the memorandum of the 25th of September, while I don't recall it other than through the words of the

memorandum, is consistent with my
recollection

. . . .

Independent Counsel: Did you ever discuss with Mr. Wallach any concerns you may have had about the propriety of the Labor Party receiving a portion of the funds in this project, any concerns that you had about that?

Mr. Meese: No. I don't recall discussing the Labor Party receiving the funds at all. It's in that memorandum and I probably read it at the time to the extent that I read it that carefully but I don't recall it ever being discussed.

. . . .

Independent Counsel: Did [Mr. Wallach] give you any indication as to how many people knew about this Israeli stake and the Labor Party stake in the pipeline project?

Mr. Meese: No. My recollection -- the only recollection I have is of -- particularly in regard to that reference to quid pro quo in the [five-page] 25th of September memorandum, was it was the general benefit of Israel.

I have no even general recollection of the benefit to the Labor Party other than as is expressed in that other memorandum that you showed me.

I know -- I believe that there was no other discussion at all, or at least I don't remember any discussion about how the money was going to go, and to me it appeared that Israel would have had a beneficial interest coming as a part of the total transaction, but exactly how that all worked I didn't know.

. . . .

Independent Counsel: . . . Would it be a fair statement that [Mr. Wallach] would provide you orally with most of the information that would be in his memoranda and then he would just reduce to writing that which he has already told you orally?

Mr. Meese: Probably --

Mr. Rocap (attorney for Mr. Meese): In the context of this pipeline matter only?

Independent Counsel: Let's confine it to the context of the pipeline matter.

Mr. Meese: Probably that is generally correct although often there would be more in the memoranda, more detail in the memoranda, than I recall from any of the conversations. . . .

Mr. Meese subsequently provided the office of independent counsel with additional clarifications relating to his November 22, 1987 deposition. In those clarifications, Mr. Meese stated that, although he had a general recollection of receiving the September 25 memorandum from Mr. Wallach, he did not have "any recollection of reading the passage of the second September 25 memorandum that a portion of the money to be received by Israel 'will go to labor' or that that fact would be 'denied everywhere' prior to this [independent counsel's] investigation." Nor had he a "general or specific recollection of Mr. Wallach or anyone else informing [him] at any time that the Israeli Labor Party would be receiving funds" from or in connection with the pipeline project.

**B. October 7, 1985 -- Mr. Meese's Letter
To Prime Minister Peres**

On Monday, October 7, 1985, Mr. Meese, in his own hand, wrote the following letter to Prime Minister Peres on small, bond stationery with "Attorney General" letterhead:

7 October 1985

Dear Mr. Prime Minister: -

Thank you for your letter of 19 September 1985. I am pleased to learn of your interest in the pipeline project, which I believe will be of mutual benefit to the countries involved.

When you arrive in the United States, I recommend that you discuss this matter with Robert McFarlane, Assistant to the President for National Security Affairs, since George Shultz has had to recuse himself from any matters concerning one of the major contracting parties for this project. "Bud" McFarlane is thoroughly familiar with the subject.

I hope I will have the opportunity to see you during your stay in our Country.

With best personal wishes,

Edwin Meese III

The circumstances leading up to Mr. Meese's preparing and sending this handwritten letter to Prime Minister Peres are discussed below.

Mr. Meese returned from his California trip late Monday night, September 30, 1985. Mr. Wallach telephoned Mr. Meese on Wednesday, October 2,^{258/} and had an 11:45 a.m. meeting with him on Thursday, October 3, 1985. Mr. Wallach also had a 3:00 p.m. meeting on October 3, 1985, with another Rappaport lawyer, Mr. Kaplan.

^{258/} It is worth noting again that no complete record is kept in the Office of the Attorney General of completed telephone calls. More complete records are kept only of uncompleted calls to the Attorney General.

On Sunday, October 6, 1985, Mr. Wallach and Mr. Meese flew together to Philadelphia, Pennsylvania, for the presentation of an honorary degree to Mr. Meese at Spring Garden College.

C. October 7, 1985 -- Mr. Meese Contacts Mr. McFarlane

Both Mr. Meese and Mr. McFarlane recalled that Mr. Meese contacted Mr. McFarlane to seek his advice as to how to respond to the letter from Prime Minister Peres. Mr. Meese further stated that he and Mr. McFarlane agreed that the response should be a handwritten one from Mr. Meese in which Mr. Meese would refer the Prime Minister to Mr. McFarlane.

Mr. McFarlane testified that [

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]

In his interview with the office of independent counsel, Mr. McFarlane also said that he or Mr. Meese may have contacted Secretary Shultz before Mr. Meese sent his response to Mr. Peres.

Neither Mr. Meese nor Mr. McFarlane recalled precisely when their conversation took place. However, Mr. McFarlane's calendar reflected a seven-minute private meeting

with Mr. Meese Friday, October 4, 1985, at approximately 11:33 a.m., following a White House meeting.

Mr. McFarlane stated emphatically that Mr. Meese never mentioned the purported financial interest of the Israeli Labor Party in the revenue from the pipeline. In fact, he told investigators that, had Mr. Wallach suggested to him that any sums of money would be paid to the Israeli Labor Party in connection with the Aqaba pipeline project, he would have "thrown him out of his office."

During his grand jury testimony, Mr. McFarlane was questioned as to [

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] He stated in response:

[

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Mr. McFarlane also testified that, [

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[GRAND JURY MATERIAL DELETED]

Mr. Meese does not believe that Mr. Wallach or anyone assisted him in drafting the response to Mr. Peres. However, he does not specifically recall drafting the letter. After preparing the letter, Mr. Meese gave it to Mr. Wallach for transmittal to Mr. Peres.

According to a telex sent from Mr. Wallach to Mr. Rappaport aboard a cruise ship at 12:25 p.m. on Monday, October 7, 1985, there had been "lengthy meetings" about the form of the response to the Prime Minister on Friday, October 4, 1985,^{259/} and a "decision has been made that the P.M. will receive a letter from E.M.^{260/} that will be very supportive."

Mr. Wallach stated in the telex to Mr. Rappaport that on October 7, 1985, he had provided this information orally to Naftali Raz, Mr. Rappaport's business associate, but Mr. Wallach wanted also to provide the information directly to Mr. Rappaport. Mr. Wallach went on to state:

259/ This may be a reference to the meeting Mr. Meese had with Mr. McFarlane at Mr. McFarlane's office on October 4, 1985.

260/ On the copy of the telex produced to the independent counsel by Mr. Wallach, the "E" of E.M. has been changed in pen to "B." However, the timing and the content of Mr. Meese's letter to Mr. Peres make it plain that the initials "E.M." for Attorney General Meese were the appropriate initials. Mr. Wallach did, at times, use the initials "B.M." for Bud McFarlane.

I will brief the P.M. before his meeting with B.M. [Bud McFarlane] He will not raise the subject with G.S. [presumably Secretary of State George Shultz] Very strong support will be given to the P.M. for the project. The specific details of that support are not yet final. I have strongly advocated the approach recommended in my last memorandum and have received very open consideration, but not specific response. I am to continue my dialogue during the week of October 7. I will keep you informed.

My recommendation for your consideration: Do nothing further on any other front. Particularly, I urge no further effort with private sector salvage package. I will speak with M.J. [presumably Mac Johnston, Vice-President for Insurance, OPIC] I will also contact the person with whom you played golf for further instructions regarding more direct information as to intention and/or commitment from the big country.

There is reason for cautious optimism and continued patience. Be of good cheer and enjoy each day. We will do our best here. Warm regards to you and Ruth.

Bob

E. Robert (Bob) Wallach

**D. October 7, 1985 -- Arrangements for
Delivery of Mr. Meese's Letter to Prime
Minister Peres**

At 5:15 p.m. that same day, October 7, 1985,

Mr. Wallach sent the following telex to Mr. Rappaport aboard a cruise ship and to Mr. Raz, in Geneva:

Dear Bruce:

The letter will be delivered this week. I will arrange with Nafta for personal delivery. The effort to break the log jam has begun. I will participate, but expect no firm result until next

week at the earliest. I am advocating strongly acceptance of the letter of indemnity as sufficient. I realize we will probably not achieve that without some additional backup. My goal is to achieve a solution before the visit. I will be meeting with your golf partner [presumably CIA Director Casey] this week and will advise you ASAP.

Be Patient. Have Fun.

Warmest Regards,

Bob

E. Robert (Bob) Wallach

From these telexes, it appears that Mr. Wallach arranged for Mr. Rappaport and his office to handle the delivery of the letter from Mr. Meese to Mr. Peres. Mr. Wallach was holding out hope that he might be able to persuade the United States government to underwrite virtually the entire insurance salvage package. From Mr. Wallach's telexes, it appears that he was suggesting that Mr. Rappaport, as the oil lifter in the proposed "Letter of Comfort," might not have to expend any funds toward the salvage package and that the most that might be expected of Israel would be its agreement to sign a letter of indemnity as provided in the proposed "Letter of Comfort."

Moreover, these telexes indicated that Mr. Wallach intended to devote his immediate efforts to obtaining the financial commitment of the United States to the salvage package for the Aqaba pipeline project. In pursuit of that goal, Mr. Wallach, through Mr. Meese, apparently sought Mr. McFarlane's renewed commitment to the concept of United States

government support for the political risk insurance and a new commitment for financial support for the salvage portion of the insurance package.

According to a memorandum Mr. Wallach wrote to Mr. Rappaport on October 22, 1985, summarizing his activities "for the period of Friday, October 11 through Sunday, October 20," Mr. Wallach had already met with Mr. McFarlane before October 11. Mr. Wallach reported in the October 22 memorandum:

That meeting resulted from a memo which I did indicating a desire to get this matter moving again and expressing my feelings that we had gone off track in our efforts to solve an unconventional problem through conventional means.

The reference to "a memorandum" appears to refer to the five-page September 25, 1985 memorandum which Mr. Wallach prepared for Mr. Meese and which purported to summarize the project's progress from the time when Messrs. Wallach and Rappaport first met with Mr. McFarlane in June of 1985.

A copy of the September 25, 1985 memorandum was found in the files of the NSC. The heading which, among other things, identified Mr. Meese as the recipient of the memorandum, is obliterated.^{261/}

^{261/} In another Wallach memorandum for Mr. Rappaport dictated on October 16, 1985, and dated October 18, 1985, Mr. Wallach made a preliminary attempt to summarize his activities from October 11 onwards. In that summary he referred to an NSC
(Footnote Continued)

**E. Interlude -- Status of Iraqi Government
Interest in the Project in October, 1985**

By the fall of 1985, Iraq's interest in the Aqaba pipeline project had waned. By then, Iraq had completed its work on a "spur" line to Saudi Arabia and had made commitments and signed agreements to proceed with the pipeline project from Iraq to Turkey.^{262/} The depressed oil market at that time

(Footnote Continued)

staff member being shown that day his last two memoranda to Mr. Rappaport on the Aqaba pipeline matter, and stated that these memoranda were "edited as to addressees and otherwise as appropriate."

The "last two memoranda" before October 11, 1985, of Mr. Wallach's found in the files of the NSC were:

(1) The September 10, 1985 memorandum to Mr. Rappaport in which Mr. Wallach summarized his trip to Amman, Jordan, and which was sent to Mr. Meese with a September 12, 1985 cover memorandum. The cover memorandum to Mr. Meese was not in the NSC files.

(2) The five-page September 25, 1985 memorandum from Mr. Wallach to Mr. Meese summarizing the progress of the Aqaba pipeline project from the time of the NSC involvement, with recommendations for a more direct United States role in funding the salvage package, and transmitting the letter from Prime Minister Peres. The entire identifying heading is removed from the NSC copy of this memorandum.

A copy of the five-page September 25, 1985 memorandum therefore apparently was provided to either Mr. McFarlane or to the NSC staff member, David Wigg, assigned to the project in October of 1985. It appears that Mr. Wallach caused or agreed to the removal of the heading which, among other things, identified the memorandum's recipient as Mr. Meese.

262/ The Iraq-Turkey line was completed in the fall of 1987.

also contributed to Iraq's waning interest in the Aqaba pipeline.

An EXIM bank official visiting Baghdad in late September of 1985 concluded from his conversations with Iraqi officials that "this project is dead." He doubted that the Iraqis had an urgent need for the Aqaba pipeline.

Even Jordan, which had earlier so enthusiastically endorsed the Aqaba pipeline project as being economically beneficial to that country, was pessimistic about the prospects for the project. By October 8, 1985, Jordanian officials had advised United States government officials that Iraq was unwilling to move ahead with the pipeline, and would not even set a date for the next Joint Committee meeting. Additionally, some Jordanian officials noted that part of the problem was that Bechtel's price was too high and that Bechtel's approach had hurt the pipeline prospects. These officials speculated that, if the pipeline were eventually to be built, it might not be by Bechtel.

Nevertheless, Mr. Rappaport and Mr. Wallach, with a discounted oil lift agreement now firmly a part of the Bechtel pipeline proposal, were aggressively pursuing Israeli security guarantees and the commitment of funds from the United States treasury for the salvage package that would support the proposed OPIC/Citibank political risk insurance package. In their pursuit of the Israeli security guarantee in the fall of 1985, Mr. Wallach and Mr. Rappaport solicited and received

expressions of interest and assurances from Prime Minister Peres of Israel.

As stated before, Mr. Peres wrote to Mr. Meese on September 19, 1985, that he would "go a long way to help [the pipeline project] out." And as will be developed below, during his mid-October 1985 trip to the United States, Mr. Peres expressed his personal interest in the Aqaba pipeline project to at least Attorney General Meese, Mr. McFarlane, NSC staff member Wigg, and Mr. Wallach. Finally, on November 20, 1985, after he and other Israeli officials negotiated the precise terms of a letter of guarantee with Mr. Rappaport, Mr. Peres signed a letter to Mr. McFarlane in which he gave formal assurance to the United States government that the Government of Israel was willing to enter into and abide by agreed upon guarantees for the security of the construction and operation of the Aqaba pipeline.

F. October 11, 1985 -- David Wigg Is Assigned

On October 11, 1985, Mr. Wallach dictated the following telex to Mr. Rappaport:

Major Breakthrough at NSC. I am working with a new team. They have accepted our premise of Letter of Indemnity but much remains in order to persuade parties already involved. We will work over the weekend . . .

Please advise P.M. to request appointment with B.M. [Bud McFarlane] and E.M. [Edwin Meese] Please advise P.M. to contact me in Washington for briefing appointment before meetings and for debriefing after

appointments. I will be at State Department dinner Thursday evening.

We still do not have what we need but we now have renewed support.

As to the big country nothing to report but efforts being made.

Warm Regards,

Bob

A memorandum from Mr. Wallach to Mr. Rappaport dictated on Wednesday, October 16, 1985, and dated Friday, October 18, 1985, provided more insight into the events of October 11, 1985, and Mr. Wallach's efforts to obtain United States financial support for the salvage package. He wrote, in pertinent part:

Upon my return to Washington, I was able to hold significant conversations relating to my very last memo requesting a change of emphasis and direction in the accomplishment of the "salvage portion" of the proposal. Recognizing the excellent and creative work undertaken thus far, and without repeating the previous memos, it did not appear as though we were making the kind of progress necessary to successfully accomplish this project.

You are familiar with the events leading up to the response to the P.M.'s letter (see previous telex). As a concomitant of that, B.N. [B.M.--i.e. Bud McFarlane²⁶³] was

²⁶³/ On the telex the initials are "B.N." The independent counsel has concluded that this is apparently a typographical error or error in dictation translation since investigators found no evidence of a person with the initials "B.N."

(Footnote Continued)

reinvolved in the process and brought his original enthusiasm for its accomplishment back into the picture. I was instructed to work with new members of the NSC staff, particularly D.W. [David Wigg], who was away in Seoul at the time. Immediately upon his return to the U.S., he called that same day, and I met him within thirty minutes of that call.

He read the last two memoranda prepared for B.R., edited as to addressees and otherwise as appropriate. He immediately seized the problem and impressed me with his grasp of subtleties involved . . .

We met again that afternoon and scheduled out a plan of action . . .

This memorandum is confirmed by the entries for October 11, 1985, on Mr. Wallach's calendar. It reflected a 7:00 a.m. meeting with Mr. Meese; a 12:15 p.m. meeting with Mr. Wigg, Deputy Director of International Economic Affairs for the NSC at the time; and a 12:30 p.m. meeting with Mr. Meese. Mr. Wigg's recollection of the events was also in substantial accord with Mr. Wallach's memorandum. Mr. Wigg testified before the grand jury that:

[

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(Footnote Continued)

associated with the project. The context of the personal reference is such as to compel the conclusion that Mr. Wallach intended to use his usual initials for Mr. McFarlane, "B.M."

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]

Mr. Wigg also recalled that the project had such priority that he was granted unique and direct access to Mr. McFarlane through the White House "PROFS"^{264/} electronic message system. Mr. Wigg recalled the following during his testimony before the grand jury:

[

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] ^{265/}

Mr. Wigg further testified that [

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] ^{266/} Mr. McFarlane had Mr. Wigg review Mr. Robinson's files and contact Mr. Wallach who,

^{264/} "PROFS" is the IBM acronym for Professional Office System.

^{265/} Wilma Hall, Mr. McFarlane's secretary at the time, discounted the notion expressed by Mr. Wigg that this situation was unique, although she did specifically recall that Mr. Wigg had direct access to Mr. McFarlane on this project.

^{266/} Mr. Wigg first came to the White House staff in October of 1983 on loan from the CIA where he had been employed as a senior intelligence analyst for two years. In May of 1984, Mr. Wigg moved over to the NSC staff as Deputy Director for International Economic Affairs. In September of 1985 he became Director of International Economic Affairs.

according to Mr. Wigg, [

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]." Mr. Wigg does not recall how he first learned about Mr. Wallach's relationship with Mr. Meese, but he understood that Mr. Wallach had access to Mr. Meese.

Mr. Wigg also recalled that [

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]." According to Mr. Wigg, [**GRAND JURY MATERIAL DELETED**] However, Mr. McFarlane had also impressed him with the same concerns.

Mr. Wigg recalled that Mr. Wallach initially made only a general reference to the fact that Israel stood to benefit economically from the pipeline as a result of their agreement not to interfere with the pipeline, and that Mr. Meese was aware of this Israeli financial interest in the pipeline project.

G. October 11, 1985 -- Mr. Wallach Meets with William Casey, Director of Central Intelligence

Mr. Wallach met with Mr. Casey, Director of the CIA, at 4:15-5:00 p.m. on Friday, October 11, 1985, according to Mr. Casey's calendar. This apparently was Mr. Wallach's first trip to CIA Headquarters on the Aqaba pipeline project;

however, it was was not the first time Mr. Casey had been made aware of Messrs. Wallach's and Rappaport's participation in the project. Mr. Rappaport, Mr. Casey's "golfing partner" according to Mr. Wallach, had first been informed of Mr. Rappaport's interests in the project as early as May of 1985, by Mr. Rappaport himself.

According to Mr. Wallach's memoranda, the purpose of his meeting with Mr. Casey was to elicit the assistance of the CIA in determining the true interests of the Government of Iraq. In Mr. Wallach's memorandum of October 22, 1985, he reported the following to Mr. Rappaport about his October 11 meeting with Mr. Casey:

The meeting with Casey produced very little in the sense that he said that he could not be of much help regarding the question of Iraq's interest. However, he did make available to us the resources of the agency in terms of background information on participants involved, and strategy planning to elicit further information.

Mr. Wallach then wrote that he had spent the weekend playing "host during the course of our work meetings, which encompassed meals as well."^{267/} This appears to be a

^{267/} During the week of October 6-15, 1985, Mr. Wallach was also busy assisting the Meeses in other ways, some of which are discussed elsewhere in this Report. It is unclear exactly when Mr. Wallach first spoke with Israeli Ambassador Rosenne or others about the possibility of Mr. Meese being invited to travel to Israel. On October 8, 1985, Mr. Wallach wrote Marshal J. Breger about such a trip. (Mr. Breger was a
(Footnote Continued)

reference, in part, to "work meetings" with Mr. Meese over lunch on Saturday, October 19, 1985, as well as communications with Mr. Gerson on the OPIC salvage package and as communications with Mr. Wigg.^{268/}

(Footnote Continued)

Special Assistant to the President with responsibility for, among other things, liaison with the American Jewish community. Mr. Wallach and Mr. Breger had become friends during the time that Mr. Breger worked with Mr. Meese at the White House.) In the letter, Mr. Wallach noted that the "first order is to arrange the invitation," and suggested that Mr. Breger "sit down with Ambassador Rossane [sic]" who has "already expressed some awareness of the proposed trip."

One week later, on October 15, 1985, Mr. Wallach sent a telex to Mr. Raz, stating:

if appropriate, the P.M. should invite EMIII, his wife and daughter to his country for an unofficial visit. The dates should include March 23 through March 30. . . .their primary purpose is to dedicate a grove of trees in the jnf [Jewish National Fund] truman forest in memory of their son, Scott. I contributed towards this grove in 1982

This subject should be raised by the P.M. only if he feels it appropriate.

^{268/} The CIA assisted the independent counsel in attempting to reconstruct the events surrounding the October 11 meeting between Mr. Wallach and Mr. Casey. The CIA Office of General Counsel was unable to determine if there were any witnesses to the meeting (which apparently lasted 45 minutes according to Mr. Casey's calendar). The CIA did not locate any record of any request for action made by the Director or any action being taken as a result of the meeting.

Mr. Wigg also professed ignorance of the October meeting between Mr. Wallach and Mr. Casey, yet he did recall meeting several times, perhaps over the weekend, with Mr. Wallach. Mr. Wigg was present for a December 1985 meeting between Mr. Wallach and Mr. Casey.

V. **OCTOBER 15, 1985 -- PROPOSAL THAT ISRAEL
ASSIGN ITS RIGHT TO UNITED STATES FOREIGN
AID FUNDS**

Mr. Wigg recalled that, [

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In Mr. Wallach's memorandum of October 22, 1985, he described an October 15, 1985 meeting that he arranged at OPIC with OPIC President Nalen, Vice President and General Counsel Shanks, Vice President for Insurance Johnston, and Mr. Wigg.^{269/} He described this meeting as:

^{269/} On the afternoon of October 15, 1985, immediately after the OPIC meeting, Mr. Wallach telexed a description of the meeting to Mr. Rappaport. In this telex, Mr. Wallach indicated that "Top Echelon . . . have accepted the proposal of a letter of indemnity backed by an assignment of already committed funds to the small country." However, Mr. Wallach indicated that one official refused to agree that this approach involved "no risk." Mr. Wallach reported that, in
(Footnote Continued)

a two hour session in which it became very apparent that the roadblocks had been placed by Johnson [sic] and who simply had no real belief in the project. He put it in terms of not believing that it was politically feasible to accomplish any kind of coercion over the State of Israel in terms of any commitment they might make, least of all reimbursement of funds expended. They also had very serious doubts about whether or not the producing country was even interested in the project at all and had drawn all the negative conclusions based upon factual information which had been provided to them by Bechtel. It was factual information which had been refuted by information I had received in Jordan, and of which I had advised them when I briefed them on that trip. They had expressed, at that time, very substantial appreciation for the briefing, but it apparently made no real impact upon them. There was an awful lot of smiling and not much in the way of in-depth commitment.

They received a rather direct emphasis from Neylan [sic] and from the NSC people 270/ to get this project moving. It was during the course of this discussion that I made the suggestion of the "assignment" concept and, quite frankly, thought Neylan [sic] was going to come out of his seat in his enthusiastic acceptance of it as the real solution. Since it is a concept which has never before been tried, there was the usual expressions of reluctance one could imagine from Johnson [sic] and Shanks but, nonetheless, they took appropriate notes and said they would get to it.

(Footnote Continued)

response, he recommended that OPIC obtain an advisory opinion from the Department of Justice. At the same time as the sending of this telex, Mr. Wallach sent the telex to Naftali Raz in which he proposed that Prime Minister Peres extend an invitation to Mr. Meese to come to Israel.

270/ Mr. Wallach exaggerated in his memorandum by giving the incorrect impression that there was another NSC official at the meeting in addition to Mr. Wigg.

On Thursday, October 17, 1985, Mr. Shanks, in response to Mr. Wallach's request, sent a letter to Mr. Meese requesting a legal opinion on the concept of assignment of Israel's interest in foreign aid appropriations.^{271/} The circumstances surrounding the handling of that letter by Mr. Meese, Mr. Wallach and Deputy Assistant Attorney General Allan Gerson are explored below. The discussion begins with a short summary of background information pertaining to Mr. Gerson.

^{271/} In his October 22, 1985 memorandum to Mr. Rappaport, Mr. Wallach wrote that Mr. Shanks sent him a draft of the letter to the Department of Justice on October 16. He wrote:

When I got it, it was the usual lawyer's attempt to sabotage a project by multiple questions and complexities, all in the guise of interest in obtaining information, and actually designed to be self-protective at the least, and destructive at the most.

Mr. Wallach related in his memorandum how he complained to Mr. Shanks about the letter and, according to Mr. Wallach:

while [Mr. Shanks] was amenable on the phone . . . the ultimate letter that he sent directly to the Attorney General contained everything that was in the letter and more. In other words, he told me he was going to do one thing, and he did the other and reinforced it.

Mr Shanks does not believe he actually sent Mr. Wallach a draft of his letter, although he does believe he read excerpts of the draft over the telephone to Mr. Wallach.

**A. October 17, 1985 -- Mr. Wallach Solicits Favorable
Legal Opinion from Department of Justice Lawyer**

In the Spring of 1985, Mr. Wallach met Allan Gerson through Marshal J. Breger, Special Assistant to the President in charge of liaison with the Jewish and academic communities, and Ambassador Kampelman, who was then the chief negotiator at the strategic disarmament talks. As indicated earlier, Mr. Gerson was the Special Assistant to the United States Permanent Representative to the United Nations.

At the time of their meeting, Mr. Gerson was seeking a position at the Department of Justice. He previously had been employed at the Department in the Appellate Litigation and Special Investigations sections.

Mr. Wallach and Mr. Gerson met for a meal at a Georgetown restaurant in or before March 1985. At this meeting, Mr. Wallach told Mr. Gerson that he was advising the new Attorney General on personnel matters [**GRAND JURY MATERIAL DELETED**] in light of Mr. Gerson's interest in securing a position with the Department.

Mr. Wallach mentioned Mr. Gerson to Mr. Meese on February 27, 1985, within a week of Mr. Meese's confirmation. Mr. Gerson met and interviewed for a Department of Justice position with a number of Department officials, including the Attorney General. He was hired in August 1985 and began work in mid-September, 1985. In September of 1985, Acting Assistant Attorney General Ralph W. Tarr was the head of the Office of Legal Counsel. Although Mr. Gerson was hired as

Mr. Tarr's Deputy, Mr. Tarr was never given the opportunity to interview him for the job.

According to Mr. Gerson, on October 17, 1985, Mr. Wallach summoned Mr. Gerson to his office at the Washington, D.C. law firm of Dickstein, Shapiro and Morin. As Mr. Gerson remembered, [

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]

Mr. Gerson's calendar confirmed that a meeting took place at Mr. Wallach's law firm that afternoon. Mr. Gerson was told at the meeting by Mr. Wallach that he would be involved in [

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] Mr. Wallach then proceeded to describe generally the proposed Aqaba pipeline project. According to Mr. Gerson, Mr. Wallach indicated:

[

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]

Mr. Gerson testified that [

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] Mr. Wallach left Mr. Gerson with the following understanding of what

Mr. Wallach's role in the pipeline project was, according to Mr. Gerson's testimony:

[

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At this meeting, Mr. Wallach informed Mr. Gerson that Mr. Gerson would be receiving a written request from OPIC, addressed to the Attorney General, for an opinion on the legality of an assignment by the Government of Israel of its interest in foreign aid funds as security for an OPIC commitment in connection with the pipeline. At that time,

[

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272/ In a memorandum from Mr. Wallach to Mr. Rappaport dated October 22, 1985, Mr. Wallach made reference to his meeting with Mr. Gerson:

[i]nformally, I had met with Allen Gerson, who is the Deputy Assistant Attorney General in the Office of Legal Counsel. . . . It is I who had recommended him for the position and introduced him to EMIII. I discussed the project with him, . . . I then discussed with him the results which we needed.

Mr. Wallach told Mr. Gerson [
 GRAND JURY MATERIAL DELETED] It was Mr. Gerson's
 impression at this time [GRAND JURY
 MATERIAL DELETED] Mr. Wallach told Mr. Gerson [GRAND

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] When Mr. Gerson and Mr. Wallach
 left Mr. Wallach's office together, Mr. Wallach was on his way
 to OPIC.^{273/}

B. October 17, 1985 - OPIC Sends Request for
 Legal Opinion to Attorney General Meese

The formal request by OPIC for an opinion from the
 Department of Justice was finalized on the afternoon of
 Thursday, October 17, 1985, and hand delivered to Mr. Meese at
 the Department of Justice. Mr. Meese told the independent
 counsel that he is almost positive that he received advance
 notice from Mr. Wallach that the letter was coming. The
 October 17, 1985 letter reflected the delivery of copies to
 Mr. Wigg of the NSC staff and to Mr. Wallach,^{274/} but did not

^{273/} Mr. Gerson's meeting with Mr. Wallach occurred the day
 after a reception in Mr. Peres' honor at the Israeli Embassy
 in Washington during which Mr. Peres discussed the Aqaba
 pipeline project with Mr. Meese and Mr. Wallach, and expressed
 his support of the project. That conversation and a
 subsequent meeting of Mr. Wallach and Mr. Peres in New York
 City, at which Mr. Peres again expressed support, is discussed
 infra.

^{274/} When he received the October 17, 1985 letter, Mr. Gerson
 noted that the letter reflected copies to Mr. Wigg and Mr.
 (Footnote Continued)

reflect any copy to the Office of Legal Counsel at the Department of Justice.

The October 17, 1985 letter to Mr. Meese from OPIC Vice President Shanks requested the opinion of the Department of Justice on eight specific questions relating to the idea that an assignment of foreign aid funds be used to back the salvage package. The Shanks letter included a description of the Aqaba pipeline project and of the request "by various private parties and, more recently, by the National Security Council, to consider the possibility of OPIC's issuing a rather unique political risk insurance policy." Mr. Shanks explained that the proposed insurance policy was to be backed by a salvage package which would include "an assignment of the right of the Government of Israel to receive foreign aid funds from the Government of the United States." A proposed assignment accompanied the letter. The letter expressed the concern of OPIC "about the legal validity and enforceability

(Footnote Continued)

Wallach. In a conversation that day or the next day, Mr. Wallach asked Mr. Gerson if Mr. Wallach's name was on his copy of the letter. When Mr. Gerson responded that [

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]

Mr. Gerson further testified that [

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]

of the proposed assignment of a right to receive U.S. development assistance." The letter reflected that copies were being provided to "David G. Wigg, NSC" and "E. Robert Wallach, Esq."

Mr. Gerson remembered that, on the afternoon of his meeting with Mr. Wallach, he found a copy of the letter from OPIC to Mr. Meese on his desk.^{275/} Mr. Gerson understood his assignment as follows: [

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]

1. October 18, 1985 -- OPIC Sends Blind Copy of Request for Legal Opinion to Office of Legal Counsel

Mr. Gerson testified that [

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] However,

Mr. Shanks, who had previously worked with Mr. Tarr in the Office of Legal Counsel, unilaterally notified Mr. Tarr about the OPIC opinion request in a telephone conversation initiated

^{275/} As indicated earlier, a copy of the letter had not formally been sent to the Office of Legal Counsel; the evidence demonstrates that Mr. Gerson's copy came from either Mr. Wallach or Mr. Meese.

by Mr. Shanks. Mr. Shanks later provided Mr. Tarr with a copy of the October 17, 1985 request for an opinion.

Mr. Shanks informed the independent counsel that he alerted Mr. Tarr because he was concerned that Mr. Wallach might try to circumvent the normal Department of Justice procedures for handling requests for legal opinions. Mr. Shanks based this concern on remarks of Mr. Wallach at the October 15, 1985 OPIC meeting when Mr. Wallach insisted that Mr. Shanks not send the letter to the Office of Legal Counsel but, instead, send it only to the Attorney General.

When Mr. Wallach first suggested this, Mr. Shanks tried to explain the procedures at the Department of Justice for normal routing of such a request to the Office of Legal Counsel. Mr. Shanks argued to Mr. Wallach at the October 15th meeting that, to expedite matters, the request should be sent directly to that office. Mr. Wallach dismissed those observations and suggestions, and insisted that the request be sent only to Mr. Meese.

Mr. Shanks was fearful that, if he sent the letter only to the Attorney General, the appropriate office within the Justice Department, i.e., the Office of Legal Counsel, might not receive the OPIC request for a legal opinion from the Office of the Attorney General. The result might then be that OPIC would get a "bad opinion" supporting the foreign aid assignment concept from an "inexperienced Special Assistant" to the Attorney General. While such an opinion would serve

Mr. Wallach's interests, Mr. Shanks was of the strong view that any legal opinion favoring the foreign aid assignment concept would be legally unsound. Accordingly, despite Mr. Wallach's admonitions, Mr. Shanks made certain that the request for a legal opinion went through the correct channels by personally delivering by hand a blind copy to Mr. Tarr. The evidence establishes that Mr. Tarr received this copy by Friday, October 18, 1988.^{276/}

2. October 18, 1985 -- Mr. Wallach
Learns of Blind Copy

At some time, apparently before the close of business on Friday, October 18, 1985, a note from "bob" to "Ed" was delivered to Mr. Meese. This note stated:

Ed:

I have just learned, from Allan Gerson, that OPIC General Counsel, Bob Shanks, sent a copy of the documents directly to Ralph Tarr as well. I prefer to believe that this is another e.g. of OPIC staff's effort to (1) biloxi [sic] this deal with as much

^{276/} According to Mr. Tarr, Mr. Shanks informed him in their telephone conversations that Mr. Wallach had instructed Mr. Shanks to send the opinion letter directly to Attorney General Meese. Both Mr. Tarr and Mr. Shanks knew that, in the ordinary course, the request for an opinion would be sent to Mr. Tarr. Mr. Tarr also remembered being told by Mr. Shanks that Mr. Wallach had claimed that he would obtain the desired result from the Department of Justice. From his conversations with Mr. Shanks, Mr. Tarr concluded that the requested opinion could not be provided. It was Mr. Tarr's understanding that Mr. Shanks needed someone else to confirm to Mr. Shanks' superiors at OPIC that the contemplated arrangement was not workable.

complexity as possible and (2) insulate themselves from all possible criticism, despite strong emphasis to accomplish this project from their own leadership.

My concern is that this project will become bogged down. Conversations this morning emphasize the need to obtain OPIC approval of the assignment concept ASAP, and letter from P.M. agreeing to it, at least in principle, before he leaves on Thursday. Given their attitude, I expect even more footdragging, even if response from DOJ is both favorable and swift, which means to me a response by Monday.

I am advised that in order to accommodate me with more ample time, I will not see P.M. today, but will go to NYC to see him, time to be determined.

Your advice please, although I don't need to hear a thing from you if it just flows smoothly to A.G. [Allan Gerson], who is ready to go to work.

bob

The note was obtained from files in the Office of the Attorney General. Mr. Meese does not recall the circumstances of his receiving this note from Mr. Wallach, but remembered that he did receive it.

3. October 18, 1985 -- Mr. Gerson Advises Mr. Meese that He Is Working on the OPIC Request

It is the general recollection of Mr. Gerson that [

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[
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]

At 3:50 p.m. on the afternoon of Friday, October 18, 1985, Mr. Wallach sent a telex to Mr. Rappaport in which Mr. Wallach reported that "[t]he proposed letter of assignment is currently at the DOJ for review. Estimated time is Monday afternoon with work over the weekend." In this telex, Mr. Wallach informed Mr. Rappaport that Mr. Wallach had an appointment with Mr. Peres at 3 p.m. Monday, October 21, 1985, in New York City. It appears from Mr. Wallach's report that the appointment with Mr. Peres was the deadline for the completion of Mr. Gerson's project.

At that time . . . [i]t is also the desired objective to have him [Mr. Peres] sign a second letter agreeing to the assignment concept even if the specific details must still be developed. All this is predicated upon DOJ approval and OPIC follow through.

4. **October 19-20, 1985 -- Mr. Wallach
Works with Mr. Gerson to Produce
Favorable Legal Opinion**

Mr. Wallach and Mr. Meese had lunch in Washington, D.C. on Saturday, October 19, 1985. Mr. Wallach characterized this meeting in a memorandum to Mr. Rappaport written the next day as a "2 1/2 hour lunch." In an October 22, 1985 memorandum, Mr. Wallach reported to Mr. Rappaport that he had

spent the rest of Saturday and Sunday afternoon working with Mr. Gerson. He summarized his efforts as follows:

I found, to my dismay, but not to my surprise, that even Allen [sic] Gerson managed to find plenty of lawyer-like problems to cause us delay and hesitancy. I had to sit down and work with him and others to redirect them to the accomplishment of this goal and to answer their questions As of this moment, I still don't have the final product from the DOJ, and while I remain optimistic, it is obviously going to be more of a problem than it should be.

I will be working with Allen [sic] this afternoon (Sunday) and will remain in touch with him until we get the final product.

In a memorandum dictated two days latter, Mr. Wallach indicated that his efforts continued through Sunday, October 20, 1985, and into Monday, October 21, 1985.

I spent a good part of Sunday, October 20 working with the individual at the DOJ who was responsible for preparing the response to the OPIC letter. Despite the fact that he is an individual whom I know well, actually introduced to EMIII, and recommended him for his current position, he managed to find more legal problems in the proposal and request by OPIC. . . .

By 11:00 in the evening, via a telephone call from him, I felt we had resolved the issues. The following morning he called me with a resurrection of them. However, I discussed the matters with my close friend [presumably Mr. Meese] who was of exactly the same point of view and legal interpretation as my own. As of the writing of this memorandum [Tuesday, October 22], we have still not seen the formal response, but it has been outlined to me, and is favorable.

Mr. Gerson recalled that he did not mention this project to anyone; he assembled materials at the Department of Justice on Thursday and Friday and worked at home on the project over the weekend of Saturday October 19, 1985, and Sunday, October 20, 1985. According to Mr. Gerson, Mr. Wallach telephoned him several times that weekend to discuss the project and his progress. [

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]
Mr. Gerson prepared a handwritten draft memorandum on the assignment request and a handwritten draft letter to OPIC, for the signature of the Attorney General, which stated the conclusion that:

For the reasons more fully discussed in the attached memorandum of law supplied by the Office of Legal Counsel I believe that assignment of appropriated funds is not improper and that such an assignment is enforceable in U.S. Court providing that Israel specifically waives in the instrument of assignment its sovereign immunity against being sued for violation of the terms of this assignment.

5. October 21, 1985 -- Mr. Gerson Delivers to Mr. Meese Initial Legal Opinion Memorandum

Over the weekend of October 19-20, 1985, Mr. Gerson drafted at least two more versions of the memorandum

concerning the OPIC opinion request. He had his secretary prepare a two-page memorandum on Office of Legal Counsel stationery on the morning of Monday, October 21, 1985, which was addressed to Mr. Meese and headed "EYES ONLY." The memorandum was captioned, in part, "Iraqi Pipeline: Preliminary Response." By this memorandum, Mr. Gerson recommended that Israel execute an "instrument," waiving sovereign immunity, as a result of which:

OPIC and the co-insurer would thus still get what they bargained for, in terms of the value and enforceability of Israel's guarantee of indemnification, without the significant problems which use of the concept of "assignment" might engender.

There is no evidence of the finalization of any letter to accompany Mr. Gerson's memorandum; the only known draft letter was written by Mr. Gerson over the weekend and this draft apparently was never typed. Mr. Gerson personally handed a copy of his October 21, 1985 memorandum to Mr. Meese on that Monday. At that time, he mentioned to Mr. Meese his conclusion. According to Mr. Meese:

I recall receiving the response from Gerson and recall having a conversation with Allan Gerson concerning it, but I do not recall the substance of the conversation... It was unusual for me to receive a memo directly from an attorney within the Office of Legal Counsel. I am sure that I received the memo directly from Mr. Gerson as a result of Mr. Wallach's involvement. ...I assumed that it was being handled by the Office of Legal Counsel and I concluded from the Gerson memo that the problem was on its way to a solution

so I probably dismissed the matter from my mind.

Mr. Meese believed that he "may have shown a copy of it [Mr. Gerson's memorandum] to Bob Wallach or spoken with him about it. I doubt if I gave a copy of it to him."

The Department of Justice has been unable to locate a copy of Mr. Gerson's memorandum from the files of the Office of the Attorney General, the files of the Office of Legal Counsel, or any other Department of Justice files. The office of independent counsel was able to obtain this document from the personal files which Mr. Gerson took with him when he left the Department of Justice. The office of independent counsel has not located any draft or final letter in response to the OPIC opinion request of October 17, 1985 at the Department of Justice.

6. **October 22, 1985 -- Mr. Gerson
Meets with OPIC Lawyers**

On Monday, October 21, 1985, according to Mr. Gerson, [

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Mr. Gerson's calendar, which is consistent with his memory, reflected that a meeting with Mr. Shanks occurred at 5:00 p.m. on Tuesday, October 22, 1985. The meeting was attended by Mr. Johnston and Mr. Shanks of OPIC. [GRAND

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]

At this meeting, according to Mr. Gerson, [GRAND

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] Neither Mr. Shanks nor Mr. Johnston were aware of any association Mr. Gerson had with Mr. Wallach or any contacts the two had previously had on this matter.

After the meeting with Mr. Gerson, it became apparent to Mr. Shanks that Mr. Gerson must have reported to Mr. Wallach their statements, and that Mr. Wallach must have, in turn, shared that information with Mr. Wigg. Mr. Shanks came to this conclusion after listening to part of a telephone call from Mr. Wigg to OPIC President Nalen.

On or about Wednesday, October 23 or Thursday, October 24, 1985, the OPIC lawyers reported back to OPIC President Nalen on the substance of the meeting. Mr. Nalen was apparently expecting a telephone call from Mr. Wigg of the

NSC on the status and progress of the assignment of foreign aid concept advanced by Mr. Wallach the week before.

Mr. Shanks and Mr. Johnston were sitting in President Nalen's office when the telephone call from Mr. Wigg came in. Mr. Nalen put the call on the speaker phone. Both Mr. Shanks and Mr. Johnston recalled that Mr. Wigg was very forceful in his opening comments to Mr. Nalen. They recalled him saying, "I've got a problem with some of your people . . .," . . . "they're obstuctionists." Mr. Shanks and Mr. Johnston further recalled that Mr. Wigg stated that he did not like the way they were handling the new assignment of foreign aid concept.

After this rather belligerent beginning, Mr. Nalen transferred the call from his speaker phone to his receiver and continued the telephone conversation with Mr. Wigg in private. Both Mr. Shanks and Mr. Johnston left the room after the telephone call with the impression that there was considerable NSC pressure on Mr. Nalen to accomplish the insurance security and salvage package arrangement. They believed that they had made extensive efforts, all consistent with prudent business practices, and were nevertheless unable to obtain the full cooperation of Mr. Rappaport and Mr. Wallach in assembling an appropriate salvage package.

After the October 15 meeting with Mr. Wigg and Mr. Wallach, and after Mr. Wigg's hostile telephone call to Mr. Nalen, the two OPIC Vice Presidents felt that they were on

the defensive, without the full support of Mr. Nalen, because of the NSC pressure. Nevertheless, Mr. Shanks continued to make efforts to meet with the Department of Justice and Mr. Wigg to explore new ways of assembling a complete security and salvage package.^{277/}

By a telex dated Thursday, October 24, 1985, Mr. Wallach reported the following details to Mr. Rappaport on the meeting between the OPIC representatives and Mr. Gerson:

The two representatives of OPIC . . . indicated to him [Mr. Gerson] that the project was probably not possible because of the producing country's unwillingness to participate and generally discouraged an affirmative response from him. They indicated that they had drafted the questions recognizing that it was probably impossible to respond to them in a positive manner. All of this was promptly communicated to me by a now insecure DOJ attorney, despite prior conversations and guidance that he had received, as well as indications from his department as to the desired response.

4. Upon learning that, steps were taken and the individuals from OPIC involved were severely taken to task for their approach. They have now initiated another request of DOJ for a meeting indicating that they are very willing to pursue an affirmative course of action in an effort to solve this problem.

Mr. Gerson believed that he was no longer actively involved with this matter after his October 22, 1985 meeting

^{277/} On October 31, 1985, Mr. Shanks sent a letter to Mr. Wigg in which he recapitulated the progress and problems to date in the OPIC efforts.

with OPIC representatives. Meetings about the pipeline were either cancelled or did not concern substantive matters relating to the project. According to Mr. Gerson, [GRAND

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]

7. October 23, 1985 -- Mr. Tarr Assigns
Request to Department of Justice
Staff Attorney

Meanwhile, Mr. Tarr had obtained a copy of the OPIC letter and, to ensure that it was handled appropriately, assigned it to a staff attorney, Barbara P. Percival.^{278/} An assignment report found in the files of the Office of Legal Counsel reflected that Ms. Percival was formally assigned the matter by Wednesday, October 23, 1985.

Mr. Tarr and Ms. Percival thereafter met with the representatives of OPIC, and orally listed the problems that needed to be resolved before they could provide the requested written opinion. Mr. Gerson did not actively participate in the project after this time.

In addition, Ms. Percival prepared an internal memorandum, dated October 29, 1985, to Mr. Tarr and Mr. Gerson, that detailed the funds available either for

^{278/} Mr. Tarr advised the independent counsel that, when he learned from Mr. Shanks of the involvement of Mr. Wallach and Mr. Gerson in the matter, his concern that the matter might not be handled in the normal course was heightened.

assignment or for commitment under an indemnification agreement. Ms. Percival concluded that:

Both of these options have substantial legal problems, but it is difficult to reach any definitive conclusions about the legality of either option without additional factual background and without consulting the State Department and AID.

The project was abandoned without further substantive work after these actions; the Department of Justice did not respond in writing to the October 17, 1985 OPIC request for a legal opinion.

By Friday, October 25, 1985, it was plain to both Mr. Wallach and Mr. Wigg that no hope remained for the idea of using an assignment of Israel's interest in United States foreign aid to satisfy the salvage portion of the political risk insurance package. Mr. Wallach, himself, was losing faith in the OPIC assignment approach, and wrote to Mr. Rappaport on October 23, 1985 that his discouragement was based on his sense that "OPIC will drag its feet every conceivable way."279/

279/ Mr. Wallach appears to have reported to Bechtel orally the October, 1985 events in Washington, D.C. In a memorandum to his colleagues dated October 29, 1985, Mr. Moriarty reported:

Bob Wallach and I met to discuss the above project on October 26th. He advised me he had just returned from Washington, having met
(Footnote Continued)

Meanwhile, during this short-lived effort by Messrs. Wallach and Wigg to fund the salvage portion of the project through the foreign aid assignment concept, Mr. Wallach actively pursued a firm written commitment from the Government of Israel that they would not interfere with the construction or operation of the pipeline.

C. October 16, 1985 -- Messrs. Wallach and Wigg
Meet with Frank Zarb to Ascertain Iraqi
Government Interest

On October 16, 1985, Mr. Wallach traveled with Mr. Wigg of the NSC staff to New York City for a meeting with Frank G. Zarb, a General Partner of Lazard Freres. The purpose of that meeting, according to Mr. Wallach's memoranda and Mr. Wigg's memory, was to determine through Mr. Zarb's contacts in the Middle East the level of the Government of Iraq's interest in the Aqaba pipeline project, and to broach

(Footnote continued)

with Ed Meese and [Bud] McFarlane.

The Administration is still very anxious for this project to proceed; and during the series of meetings in Washington, Meese and McFarlane instructed the officers of OPIC to finalize the details of the security package and to discontinue pressing for salvage.

The office of independent counsel has not obtained any evidence that Messrs. Meese or McFarlane personally had any direct communications with any OPIC officer in October 1985.

the concept of an insurance consortium to underwrite the war risk as an alternative to the OPIC/Citibank insurance package.280/

Mr. Zarb recalled that Mr. Wigg telephoned to request a meeting to obtain his advice concerning an unspecified project of interest to the United States government.281/

The meeting was held in Mr. Zarb's office at Lazard Freres in New York City. Mr. Zarb recalled that Mr. Wigg first described the Aqaba pipeline project in general terms, and stated that it was a high priority of the United States government. Mr. Zarb said that Mr. Wigg may have mentioned the names of the President and CIA Director Casey to emphasize the project's importance.

After describing the project, Mr. Wigg asked for Mr. Zarb's advice concerning financing approaches. Mr. Zarb stated his view that, because of the political tensions in the

280/ This consortium concept was one of Mr. Rappaport's ideas as reflected in telexes of mid-September of 1985. Mr. Wallach recommended that Mr. Rappaport not pursue this idea while Mr. Wallach pursued United States government funds for the insurance and salvage packages. Thus, in an October 7, 1985 telex, Mr. Wallach told Mr. Rappaport that his recommendation was: "Do nothing further on any front. Particularly, I urge no further effort with private sector salvage package."

281/ Mr. Zarb had prior contact with Mr. Wigg concerning an unrelated project, and he knew that Mr. Wigg was on the NSC staff. Having recalled that CIA Director Casey had commented favorably about Mr. Wigg, and given Mr. Wigg's position, Mr. Zarb agreed to meet on October 16, 1985.

Middle East and the resulting high risk to the project, private financing would not be possible without guarantees from a sovereign entity with sound credit. Mr. Zarb also recalled discussing private war risk insurance at the meeting. He expressed his view that, if such insurance could be obtained at all, the fees would be "astronomical."

Mr. Zarb did not specifically recall being asked to inquire through his contacts about Iraq's interest in the project, but stated that he may have been asked to do so. Mr. Wallach told Bechtel that Mr. Zarb reported that Iraq was "70 percent" committed to the project. An NSC PROFS message from Mr. Wigg to Mr. McFarlane on October 18, 1985, also indicated that Mr. Zarb gave "70 percent accuracy Iraqis are still interested but do not want to rush things."

**VI. OCTOBER 16, 1985 -- PRIME MINISTER PERES
TRAVELS TO WASHINGTON, D.C. FOR OFFICIAL VISIT**

On Wednesday, October 16, 1985, Prime Minister Peres made a trip to the United States. He stayed in Washington, D.C. from October 16, 1985, until October 18, 1985, when he left for New York City.

On Wednesday, October 16, 1985, at 4:34 p.m., Mr. Wigg sent a PROFS message to Mr. McFarlane on the Agaba pipeline project in which he wrote, among other things, that:

Wallach was supposed to meet Peres at
3PM today and then to call me with a

readout.^{282/} He also had unconfirmed word from Justice that their legal opinion would probably find no problem with assigning future aid proceed [sic] to indemnify OPIC/Citibank. We will wait to see on that. He is also pursuing the language needed in letter Peres is expected to sign this week guaranteeing against aggression. Will keep you posted.

In a brief acknowledgement, Mr. McFarlane sent the following PROFS message to Mr. Wigg at 7:19 p.m.: "Outstanding work Dave. Let me know when/how I can be helpful."

**A. October 16, 1985 -- Mr. Meese and Mr. Wallach
Talk with Prime Minister Peres**

Also on October 16, 1985, Mr. Meese and Mr. Wallach separately attended a reception at the Israeli Embassy honoring Prime Minister Peres. Mr. Meese recalled that at one point during the reception, Mr. Peres "pulled me aside and spoke with me privately about his personal interest in the success of the Aqaba pipeline project." Mr. Peres was "interested in making clear that Israel would not interfere with the pipeline project or attack the pipeline project." He told Mr. Meese he was going to meet with Mr. McFarlane.

Mr. Meese stated that after about five minutes Mr. Wallach joined the private conversation and that the three

^{282/} The Prime Minister's airplane did not arrive until after 3 p.m., however, and no meeting between Mr. Peres and Mr. Wallach took place on the 16th. It is not known to the independent counsel whether a meeting between Mr. Wallach and the Prime Minister was, in fact, scheduled or, if so, who scheduled or arranged it.

of them continued to discuss the project. Mr. Peres had just expressed his appreciation to Mr. Meese for his "help in the project," and made essentially the same statement after Mr. Wallach joined the conversation. According to Mr. Meese, Mr. Wallach "may have made reference to a meeting between Mr. Peres and Mr. McFarlane or Mr. McFarlane's staff."

Mr. Wallach, in a memorandum to Mr. Rappaport dated October 22, 1985, described his discussion at the Embassy with Mr. Peres as follows:

[A]t the reception, I waited for a moment when there was a break in the crowd around him and approached him and introduced myself. He literally dragged me off into a corner at that moment and began discussing the project intensely. There was so much noise and so many people trying to get to him, led by Ambassador Rosanne [sic], who was anxious to introduce him to various senators and congressmen, that I simply encouraged him not to hold the discussion there. He asked me to wait until after the reception and then we would talk.

Fortunately, as that time approached, my friend [Mr. Meese] arrived and there was a three way discussion which took approximately ten minutes. He is very quick and we went right to the point and he was agreeable in all respects. It wasn't the kind of briefing I would have preferred, but it seemed to have been effective.^{283/}

^{283/} Mr. Breger remembered being asked by Mr. Wallach to arrange for Mr. Wallach to attend the October 16, 1985 reception for Prime Minister Peres at the Embassy of Israel. As Mr. Breger understood the message, the request came because, "Ed Meese wanted Wallach to attend the reception."

Mr. Wigg wrote the following PROFS message to
Mr. McFarlane at 11:00 a.m. on Thursday, October 17, 1985:

Peres was told by Meese/Wallach that subject may come up in general way sometime today -- nothing specific. If you wish to, you could confirm we are workin[g] to perfect documentary needs to underwrite Israeli assurances as requested by Iraq. He has been briefed by above persons on these requirements and probably is prepared to sign non-aggression letter while here. OPIC's draft second letter (covering assignment of US aid proceeds) is momentarily being sent to Justice' OLC for review, but final documentation probably won't be ready this week (some wrinkles on both Israeli and US ends need to be resolved, and I am encouraging Wallach/Meese to consider getting input from Fielding if deemed appropriate.) Status of Iraqi interest and other insurance possibilities will hopefully flow in via Zarb later this week.

Mr. McFarlane sent the following PROFS message to
Mr. Wigg at 3:48 p.m., apparently immediately after Mr. Peres

(Footnote Continued)

At the reception, Mr. Breger noticed that Mr. Wallach was consistently near Mr. Peres. Mr. Breger previously had discounted Mr. Wallach's claims of involvement in secret projects and of having relationships with high ranking officials of various governments. At the reception, he observed that Mr. Wallach seemed to know Mr. Peres; the two men were in fact "somewhat chummy." Mr. Wallach spent a lot of time talking to Mr. Peres and, when their conversations was interrupted by others, remained near Mr. Peres in order to resume their conversation. Mr. Breger was intrigued to note that Mr. Wallach had what appeared to be a pre-existing relationship with Prime Minister Peres. Mr. Wallach's contemporaneous memorandum to Mr. Rappaport indicated that this reception marked Mr. Wallach's introduction to Mr. Peres.

left the White House following a meeting with the President and others for 50 minutes:284/

Who precisely is to get Peres signature on something? Is it you? Howard? Wallach? Meese. I just want to know that someone is acountable [sic] for egetting [sic] whatever we need before he leaves town tomorrow.

Mr. Wigg received Mr. McFarlane's PROFS message at 4:02 p.m., and responded at 4:24 p.m. on October 17, 1985, over the PROFS system as follows:

Wallach has assured me he is vigorously pursuing the letter matter and has high hopes of getting Peres signature before he leaves town. Peres told Meese and Wallach last night that he has no problem signing the letter assuring no aggression against the pipeline and hopes to execute the second document as well when the details are worked out (the latter not before he leaves however). Would you like me to get a further update or would you want to call Ed?

Mr. McFarlane responded to Mr. Wigg's PROFS message at 5:10 p.m. on October 17, 1985: "No that sounds OK to me. Please let me know if anything turns up with which I can help. Many thanks Dave."

284/ According to the official Department of State schedule for the visit of Mr. Peres, after participating in various events and a luncheon with Congressional leaders, he visited the White House for about two hours on the afternoon of October 17, 1985, for events beginning at 2 p.m. At the White House, Mr. Peres had a 15-minute meeting with President Reagan in the Oval Office, and a 25-minute "expanded meeting" with President Reagan in the Cabinet Room of the White House.

B. October 17, 1985 -- Mr. McFarlane Talks with Prime Minister Peres

On Thursday, October 17, 1985, a State Dinner was held in honor of Prime Minister Peres at the Department of State. Mr. Meese was invited but unable to attend. Mr. Wallach was invited, and attended, as a member of the United States Advisory Commission on Public Diplomacy. Mr. McFarlane also attended.

Mr. Wallach reported to Mr. Rappaport in an October 22, 1985 memorandum that he spoke to Mr. Peres at the State Dinner about the Aqaba pipeline project. In addition, he provided the following account of his discussions with Mr. McFarlane, and his plans to meet with Mr. Peres in New York:

I next saw him at the State Department dinner going through the reception line. Again, he moved me aside to tell me that he had been instructed by Bud not to raise the subject when he met with the President. I was very surprised and I asked him whether everything had gone all right and he said yes, and that we would talk later.

Shortly thereafter, Bud came up to me in the crowd and moved me over to a corner to tell me that everything had gone fine. While he did not explain to me his instructions, I presume it is because they decided, at the last moment, either to keep the specific one-on-one discussion of the subject away from the President, or there were people present at the meeting with the President who should not be included. I still don't know who was present and so cannot respond precisely as to what occurred.

In any event, later on in the evening, the prime minister asked me to meet with him and to call the ambassador, at which point I

raised my eyebrows (a not inconsiderable effort) and he assured me it would be all right.

I called the next morning and received instructions to call back and when I did, I was told that his schedule was so hectic that he preferred to see me in New York where we would have more time to talk. I have now arranged for that meeting and dictate this memo on a Sunday morning before being scheduled to see him tomorrow afternoon in New York.

On Friday, October 18, 1985, Mr. Wigg sent Mr. McFarlane a PROFS message status report on the efforts to ascertain Iraqi interest in the Aqaba pipeline project, including Mr. Zarb's information and views. He described the efforts of Messrs. Wallach and Rappaport to arrange an alternative private insurance package and to obtain the letter of indemnity from Israel. In this PROFS message, Mr. Wigg noted that Mr. Wallach told him "this AM that he will not be able to see Peres again until next week, but plans to get his signature on the indemnity letter and a specific understanding on the insurance aspect to be concluded asap."

Mr. McFarlane belatedly responded to Mr. Wigg's PROFS message with the following PROFS message on Sunday, October 20, 1985, in which he alluded to his private conversation with Mr. Peres at the State Dinner:

Well done Dave. The players are substantial people and if it can be done they are the kind who, with your help, can do it. Let me know if I can help. Peres assured me again at dinner Thursday, that he was willing "to sign anything."

C. **October 21, 1985 -- Messrs. Wallach and Wigg Meet with Prime Minister Peres in New York City**

On Monday, October 21, 1985, at 10:48 a.m., Mr. Wigg sent the following PROFS message to Mr. McFarlane requesting permission to travel with Mr. Wallach to New York City to meet with Prime Minister Peres:

Bob Wallach has asked me to accompany him to see P.M. Peres today in N.Y. to get his signature on one, and perhaps two letters, as we have discussed. I have also set up a meeting with Hank Greenberg for this P.M. to enable Wallach to launch an AIG effort to secure a private consortium insurance policy as an alternative (if needed) to the OPIC pkg. Wallach has cleared my accompanying him to see the P.M.

Do you concur with my travel for today?

Mr. McFarlane responded promptly to this request at 11:07 a.m. on October 21, 1985, with the following brief PROFS message: "Yes that's fine Dave. Good luck."

In a memorandum to Mr. Rappaport dated October 23, 1985, Mr. Wallach described his trip to New York City with Mr. Wigg:

On Monday, D.W. and I traveled to New York. I chose to take the train because of the very strong rainstorm, and because it gave me a 2½ hour opportunity to talk with him privately . . .

He is convinced that the project can be accomplished, but feels strongly that it may have to be completely refinanced, in effect, requiring that we restructure the proposal from the beginning.

It turned out to be exactly the right course of action to bring him with me for the meeting with the P.M.

Mr. Wigg, in his testimony before the grand jury,

[GRAND JURY MATERIAL DELETED]

Mr. Wigg recalled taking the train with Mr. Wallach from Washington, D.C. to New York City on Monday, October 21, 1985.^{285/} He also recalled bringing with him two drafts of documents which Mr. Wallach had prepared: (1) a proposed letter from Mr. Wallach to the Prime Minister of Israel urging him to sign the enclosed letter of guarantee; and (2) a proposed letter of guarantee with respect to the security of

^{285/} Mr. Wigg recalled that

[GRAND JURY MATERIAL DELETED]

the Aqaba pipeline from Mr. Peres to the President of the United States.

According to Mr. Wigg, Mr. Wallach arranged for the meeting with the Prime Minister. Mr. Wigg testified that

[GRAND JURY MATERIAL DELETED]

Mr. Wigg recalled going with Mr. Wallach to the St. Regis Hotel in New York City where Mr. Peres was staying. He recalled

[GRAND JURY MATERIAL DELETED]

Mr. Wigg's recollection of the meeting with Prime Minister Peres, as recounted to the grand jury, was as follows:

[GRAND JURY MATERIAL DELETED]

[GRAND JURY MATERIAL DELETED]

[GRAND JURY MATERIAL DELETED]

Mr. Wigg recalled that the proposed letter of guarantee was then handed to Mr. Peres who said "he would have someone look at it." Mr. Wigg testified that, "I think he responded by saying some encouraging things about the project, that it was something that Israel was interested in, supportive of, and they would do -- along the lines of they would do what they had to do to make this thing happen."

Mr. Wigg recalled that the meeting took about 20 to 30 minutes. When Mr. Wigg finished his presentation to Mr. Peres, Mr. Wallach asked him to wait outside a few minutes

[GRAND JURY MATERIAL DELETED]

Mr. Wigg left the room. He did not recall anyone else remaining in the room with Mr. Wallach and Mr. Peres. Mr. Wigg stated that the two men met alone for five or 10 minutes. Mr. Wigg testified that Mr. Wallach did not tell him about the private conversation. After Mr. Wallach's private conversation with Mr. Peres ended, he and Mr. Wigg attended one more meeting in New York City, and then Mr. Wigg flew back

to Washington, D.C. in the evening of Monday, October 21, 1985.286/

286/ After the meeting with Prime Minister Peres, Mr. Wallach and Mr. Wigg met with the President of American International Group (AIG), Mr. Greenberg, in New York City. Mr. Wallach, in anticipation of this meeting, wrote in a memorandum to Mr. Rappaport that "[t]he problem with Hank Greenberg and Bechtel is the usual problem of not involving the government in a competitive private sector matter. However, I think I have that under control by emphasizing the national security aspects of the project." The memorandum was dated October 22, 1985, but was dictated earlier.

Mr. Wigg recalled that this brief meeting only confirmed his view that a private insurance security and salvage package was unrealistic because of Mr. Greenberg's pessimistic statements concerning his organization's ability to assist in the project.

According to Mr. Wallach's October 23, 1985 memorandum to Mr. Rappaport about, inter alia, the meeting with Mr. Greenberg, Mr. Wallach tried to emphasize to Mr. Greenberg "the importance of this project for the State of Israel." He said that Mr. Wigg "was particularly helpful by indicating that he thought a meeting could be arranged for the group brought together by H.G. with [Robert McFarlane] or perhaps, even with his superior in the Oval Office."

In a PROFS message he sent to Mr. McFarlane on October 22, 1985, the day after the meeting in New York with Prime Minister Peres, Mr. Wigg asked Mr. McFarlane if "a Presidential dropby" could be arranged for Mr. Greenberg and the group assembling the security and salvage package together. Mr. McFarlane responded in an October 22 PROFS message that

I would like to avoid large group meetings on this under any circumstances. It will inevitably leak if Greenberg is not discreet. And I would prefer not to promise any such group meeting with the President although I am open to a meeting with Greenberg myself if necessary.

Although he does not remember Mr. Wigg, Mr. Greenberg confirmed that he met with Mr. Wallach on October 21, 1985,
(Footnote Continued)

On October 22, 1985, at 12:14 p.m., Mr. Wigg sent a PROFS message to Mr. McFarlane in which he summarized, among other things, his and Mr. Wallach's meeting with the Prime Minister. He told Mr. McFarlane that the meeting with Mr. Peres "went ok," recounting that Mr. Wallach had "broached the second agreement regarding insurance guaranty but Peres said he would need to discuss with some others before he can commit his Government."

In his October 23, 1985 memorandum to Mr. Rappaport, Mr. Wallach summarized his version of his meeting with Prime Minister Peres and Mr. Wigg. He stated that the Israeli Ambassador to the United States was present during the meeting, and that Mr. Wallach did not give a copy of the guarantee or indemnity letter to Mr. Peres during the meeting. Mr. Wallach made no reference to meeting alone with the Prime Minister. The pertinent part of Mr. Wallach's memorandum stated:

The meeting [with the Prime Minister] went quite well, but was, understandably, on the brief side, lasting about fifteen minutes. The P.M. was accompanied by his ambassador to the U.S., who seemed to understand the project, but did not participate in the conversation, except to emphasize that the P.M.'s letter had to contain a request for ecological safeguards. The ambassador was very cordial and spent the

(Footnote Continued)

and that he told Mr. Wallach that his company could not provide the requested insurance in the absence of solid financial guarantees and other appropriate terms and conditions.

time to walk D.W. [David Wigg] and I out to the elevator and wait with us in a gesture of courtesy.

The P.M. was relaxed and immediately referred to your phone call to him. He indicated that the first letter was no problem and asked if I had a draft for him. I told him that I felt that would have been presumptuous, but that I would have the draft to him the next day, which I will. Since I would not have had the reference to the ecological matter, it would have required a revision in any event.

He indicated to me that as to the second letter, he could not act without consultation. I explained to him that I was reluctant to ask him for the second letter before he left because we did not have our own internal approval of the concept. Nonetheless, I had raised the subject only because it might help to expedite the accomplishment by knowing that it was an acceptable procedure for his country and within lawful bounds there.

**D. October 22, 1985 -- Three Draft Letters
For Prime Minister Peres**

On Tuesday, October 22, 1985, Mr. Wigg attempted to send to Mr. McFarlane in New York City, through secure communications channels, three proposed letters which had been drafted by Mr. Wallach for delivery to Mr. Peres in New York City.^{287/} These letters were almost identical to Mr. Wallach's earlier drafts. One was a proposed cover letter from Mr. McFarlane to Prime Minister Peres to accompany the remaining two letters; the second was a proposed letter from

^{287/} On October 23, 1985, Mr. Wallach also telexed copies of the text of the last two letters to Mr. Rappaport in Geneva.

Mr. Wallach to Prime Minister Peres; the third was a proposed letter of guarantee from Mr. Peres to President Reagan.

The three documents were attached to a "Secret" NSC Action Memorandum of October 22, 1985, written by Mr. Wigg for Mr. McFarlane. The Action Memorandum read as follows:

Attached at Tab A is the draft letter I worked out with Bob Wallach last night covering the Israeli Government guarantee per the pipeline. I think Wallach's cover letter should provide Peres an adequate explanation of the draft guarantee letter. Per your instructions, our goal is to have the text of the guarantee letter placed on official Israeli Government stationery, signed by Peres before he departs tomorrow and hand delivered through the appropriate U.S. channels.

RECOMMENDATION

That you agree to sign your note to Prime Minister Peres (Tab I) and have Wallach's package hand-carried immediately to the Prime Minister at the St. Regis Hotel.

The draft letter from Mr. Wallach to the Prime Minister stated:

Dear Mr. Prime Minister:

As is undoubtedly self-evident, the firm language of this letter has, as a primary objective, a goal of satisfying those private insurers who will be called upon for the purpose of providing the financial guarantees required.

I urge the completion of this letter before your schedule requires that you return to Israel.

As to the subject matter of "Letter No. 2" may I urge you to not raise this subject at this time. Upon reflection, your own careful evaluation is the

more prudent course of action. Until we are assured of our own ability here, I suggest that the subject not be discussed further. Of course, I respect your judgment in this matter.

If it seems appropriate to you, I would appreciate the designation of a member of your staff with whom I might look for counsel and through whom I might communicate with you. My own experience has offered me the opportunity and privilege to confer on two separate occasions with Mr. David Kimche. I mention this only because of my own prior contact and await your advice as to whether the selection of such an individual is your wish and, if so, with whom you would like me to be in contact.

I trust you realize how privileged I feel to be working with you on this matter. Please accept my warmest wishes and prayers for your continued good health and success.

E. Robert (Bob) Wallach

His Excellency
Shimon Peres
Prime Minister of Israel

Mr. Wallach proposed the following letter of guarantee:

Letter of Guarantee

(to be prepared in original on official stationery and signed by the Prime Minister)

Dear Mr. President:

In my official position as Prime Minister of the sovereign state of Israel I guarantee, without limitation, express or implied, that the Government of Israel will not authorize or institute any action or act of aggression that would or could result in the interruption of the construction of the project known as the Iraq-Jordan pipeline, its integral facilities, or with the export of the product of that project. This guarantee encompasses the insured as specified by the underlying agreements which cover this subject.

The Government of Israel is committed to this course of action without reservation. It is our intention that the facilities described be constructed and function as they are intended.

We remain insistent upon very strong assurance, and the implementation of those assurances, that every effort to preserve the ecology of the area will be instituted and maintained.

The President
The White House
Washington, D.C. 20500

A PROFS message reflected Mr. Wigg's effort to transmit these documents to Mr. McFarlane in New York City. Mr. McFarlane was in New York with the President for the opening of the General Assembly of the United Nations. It appears from the PROFS message and the recollection of witnesses, that the documents were not received in New York for transmittal to Mr. Peres through official United States channels. A PROFS message from Mr. Wigg, apparently sent at 5:02 p.m. on October 23, 1985, stated:

Sent eyes-only pkg. to Bill [Martin] to be daycommed to Bud. Includes my cover memo, Wallach cover to Peres, draft guarantee letter to be redone and signed by Peres and hand delivered to me, and note from Bud to Peres transmitting the whole pkg. I asked that he have someone hand carry to Peres in St. Regis Hotel. Ok?

William F. Martin, the Executive Secretary of the NSC, who was responsible for communications while Mr. McFarlane was in New York City, notified Wilma Hall, Mr. McFarlane's secretary, who was in New York with Mr. McFarlane at the time, that "[t]he Admiral has asked to see things that

are DACOMed unless they are really urgent so this is up with JMP [Admiral Poindexter] now." Mr. Martin did forward Mr. Wigg's note, but as indicated below, it appears he did not forward the Action Memorandum or package of documents.^{288/}

In addition to Mrs. Hall, Commander Thompson of the NSC staff was with Mr. McFarlane in New York City on October 22, and 23, 1985. Neither Commander Thompson nor Mrs. Hall recalled receiving a set of documents for transmittal to Prime Minister Peres while they were in New York.

The circumstantial evidence suggests that Mr. Peres may not have received the revised October 22, 1985 drafts from United States government officials while he was in New York City.

In any event, Mr. Wallach sent his drafts through other unofficial channels (Bruce Rappaport) on October 22, 1985, to Prime Minister Peres after Mr. Peres returned to Israel.

E. November 3, 1985 -- Prime Minister Peres Appoints Minister Gad Yaacobi to Be His Representative for Letter Drafting

According to an internal office memorandum from Naftali Raz to Mr. Rappaport, on November 3, 1985, Mr. Raz

^{288/} In view of his status in the investigation of Independent Counsel Lawrence E. Walsh, Admiral Poindexter, through counsel, asserted his constitutional right not to testify in this investigation.

spoke with Minister Yaacobi and was informed of the following points by Mr. Yaacobi:

1. He has been nominated by Shimon to be the "representative".
2. He has asked Zadok to be his legal advisor.
3. He wants to set-up a meeting with you, Bob, E.M. and others which he did not wish to mention on the phone.
4. He will be in Miami 28-30 Nov and in N.Y. 1st-4th Dec.
5. Rosen will have to be briefed more fully (he already knows something).
6. I told Gad that Bob will be here [in Geneva, Switzerland] this week but it does not suit Gad.
7. Gad will be in his office in J'slm today until 4:45 Geneva time. At home tonight after 8:30 Geneva time and in his Tel-Aviv office tomorrow. (The telephone numbers for all of these locations were also provided in the memorandum)

The independent counsel has no evidence that a meeting ever took place between Israeli government officials and Mr. Meese on the Aqaba pipeline project following Mr. Meese's conversation with Prime Minister Peres at the Israeli Embassy on Wednesday, October 16, 1985.

After Minister Yaacobi informed Mr. Rappaport's office that he was to be Mr. Peres' representative in the Aqaba pipeline matter, an exchange of telexes took place between Mr. Rappaport's office and Minister Yaacobi's office concerning the language of the proposed letter of guarantee.

1. November 10-17, 1985 -- Drafting Letter of Guarantee

On November 10, 1985, Mr. Rappaport sent a telex to Minister Yaacobi in Jerusalem setting forth a draft letter of guarantee for Prime Minister Peres' signature, which had apparently been prepared by Mr. Wallach. The proposed letter, addressed to Mr. Robert F. McFarlane,^{289/} was not as committal as Mr. Wallach's last draft which was sent to both Messrs. Wigg and Rappaport on October 22, 1985. In the October 22 draft Mr. Wallach had proposed that the Prime Minister say "I guarantee, without limitation, express or implied," In the November 10 draft, the language was changed to read, "You have my unqualified assurance that my government is ready to give agreed guarantees." In other words, the letter was modified from being a firm letter of guarantee to being, instead, a letter of assurance that guarantees would be forthcoming.

On November 12, 1985, after discussions with Mr. Rappaport and/or his representative, the Director General of the Israeli Ministry of Economy and Planning, Ehud Gera, telexed to Mr. Rappaport a revised text of the letter.

On November 17, 1985, after further discussions, Mr. Gera telexed another revised text to Mr. Rappaport. The Prime Minister adopted this final draft of the letter of assurance virtually verbatim.

^{289/} Mr. McFarlane's correct middle initial is "C".

2. **November 20, 1985 -- Prime Minister Peres
Signs Letter of Assurance Addressed to
National Security Advisor McFarlane**

On November 20, 1985, a letter of assurance tracking the language from the final revised draft was prepared for and signed by Prime Minister Peres. The addressee was Robert F. [sic] McFarlane, Assistant to the President For National Security Affairs. The letter was on the Prime Minister's stationery and read as follows:

Jerusalem November 20, 1985

Mr. Robert F. McFarlane
National Security Council
The White House
Washington, D.C.
U.S.A.

Dear Sir,

In pursuance of previous contacts, I would like to advise you that my government is prepared to extend guarantees, to be agreed upon, that should the pipeline be constructed, it will be inviolate from any unprovoked Israeli initiative or action. This undertaking would apply to any interruption of the construction (for an estimated 18 months from commencement) of the Aqaba pipeline, its integral facilities, or of the export of crude oil from the port of Aqaba following completion of the pipeline (for four years thereafter).

I wish to emphasize that we expect to receive the strongest possible assurances and agreed upon guarantees that all and every effort will be made to preserve the ecology of the area in general, and the waters of the Gulf of Aqaba in particular. (In this connection, I draw your attention to the non-paper of September 1984 which was transmitted to the U.S. authorities, a copy of which is attached.)

I remain available to discuss with you or with your designated representative, the method by which satisfactory guarantees are to be implemented, thus enabling me to commit my government.

Sincerely yours,

. Shimon Peres

Mr. McFarlane stated that he has no recollection of receiving the letter from Prime Minister Peres. On November 20, 1985, Mr. McFarlane was in Geneva, Switzerland at the Summit meeting between President Reagan and General Secretary Gorbachev. After the summit, Mr. McFarlane traveled through Europe on official business. He then traveled to California where he met with the President in Los Angeles, and submitted his resignation on Sunday, December 1, 1985. Mr. McFarlane returned to Washington, D.C. on Monday, December 2. His resignation was announced and became effective on Wednesday, December 4, 1985.^{290/}

Based upon the circumstantial evidence, the independent counsel has concluded that Mr. Peres' letter to Mr. McFarlane probably was delivered in response to Mr. Wallach's instructions, on November 29, 1985, to Mr. Wigg at the White House by an official from the Israeli Embassy to the United States.

^{290/} Mr. McFarlane moved his office to allow the new National Security Advisor to the President, Admiral John M. Poindexter, to assume immediate authority. However, Mr. McFarlane remained in the Old Executive Office Building until Friday, December 16, 1985.

The original executed copy of the November 20, 1985 letter was found in the files of former NSC staff member Wigg. The letter was in an envelope embossed with the words "THE PRIME MINISTER, JERUSALEM" and was marked "Top Secret." The envelope was addressed to Mr. Robert Wallach, Washington, D.C. This envelope was delivered inside another envelope which was addressed to "Davig [sic] Wigg, National Security Council, The White House (OEOP)." Enclosed in the outer envelope was a note from the Israeli Embassy in Washington, D.C., on formal note paper with the preprinted text "with the Compliments of the Embassy of Israel at Washington." Typed on this note was the date of November 27, 1985, and the words: "Per instructions from Mr. Wallach."

VII. OCTOBER 29, 1985 -- MR. WIGG PROPOSES THE FMS PLAN

Before the preparation of Mr. Peres' letter of November 20, 1985, Mr. Wigg and Mr. Wallach were hard at work attempting to develop a satisfactory salvage package which would serve as security for the OPIC/Citibank insurance package. The plan for the assignment of Israeli "rights" to foreign assistance, which Messrs. Wallach and Wigg had first proposed to OPIC on October 15, 1985, quickly faded as being a viable alternative to a privately formed salvage fund. As indicated above, the OPIC General Counsel opposed the assignment concept. Mr. Wallach's hand-picked Department of Justice lawyer, Mr. Gerson, was having difficulties defending the legalities of the concept, and, as Mr. Wigg stated in his

grand jury testimony,

[GRAND JURY MATERIAL DELETED]

[GRAND JURY MATERIAL DELETED]

According to a telex Mr. Wallach sent to Mr. Rappaport on October 30, 1985, Mr. Wigg met with Mr. Wallach on October 29, and proposed an alternative "salvage" plan to replace the flagging foreign aid assignment proposal.

In a memorandum to his files dated October 30, 1985, a copy of which was apparently sent to Mr. Rappaport, Mr. Wallach described the so-called "alternate financing project which D.W. has recommended." The memorandum stated:

A private arrangement would be initiated in which a letter from the President would be directed to the Secretary of Defense instructing an agency (unnamed) within that department to follow instructions as follows:

1. This agency is apparently authorized to provide on a continuing basis supplies of products to the friendly country as they are needed.

2. This agency would be instructed to divert amounts to be specified directly to the insurers upon receiving a written request

from a designated trustee who would hold a power of attorney for that purpose.

3. The insurers would notify the trustee when there had been a default which had required their payment of interest following the act of aggression and arbitration determination which required their payment. The product would be diverted immediately to the spot market (B.R. may have a better idea) so there would be virtually instantaneous repayment. The agency within the DOD would respond automatically to the request by the trustee.

4. The trustee would be selected by the insurers and would be paid for by B.R.

5. The DOD would not know why this is being done except that it would originate from the NSC.

SECOND SUBJECT:

The minister designated by the prime minister, Yaacobi, is a long-time party man. He has assigned to him as a legal advisor, a man named Sadok. [sic]

In a memorandum dated November 13, 1985, from Mr. Wallach to Mr. Rappaport,^{291/} Mr. Wallach alluded again to the FMS plan.

That procedure has been orally explained and should not be memorialized here. As of the dictation of this memorandum . . . the legal-technical aspects of this [FMS] proposal are being reviewed. The implementation of this proposal would obviate involvement by OPIC and a private bank. It would encompass involvement by insurers

^{291/} Mr. Wallach sent copies of this memorandum to Mr. Wigg, Judge Clark, and Mr. Kaplan. Judge Clark does not recall receiving or reading this or certain other memoranda from Mr. Wallach that lists Judge Clark as a recipient of a copy.

(probably led by AIG), thus leaving open the question of premium cost As of this moment, there is no reason to seek a second letter [letter of indemnity or Letter of Comfort from the Government of Israel] and, if the altered financing-guarantee package is achieved, there will be no need for one.

Mr. Wigg's new proposal apparently was designed to obviate the need for a financial commitment from Israel. This certainly would be consistent with Mr. Wallach's own hopes and goals as expressed in his five-page memorandum of September 25, 1985, when he first raised the possibility with Mr. Meese of United States government funding, as opposed to Israeli government and private funding, of the insurance salvage package.

In late October or early November 1985, Mr. Wigg telephoned a Department of Defense lawyer with whom he had previously worked on matters of joint DOD-NSC interest. The lawyer was George Folsom, Special Assistant to the Deputy Assistant Secretary for International Economic Trade and Security Policy. In his grand jury testimony, Mr. Wigg described

[GRAND JURY MATERIAL DELETED]

[GRAND JURY MATERIAL DELETED]

Mr. Folsom testified in the grand jury that

[GRAND JURY MATERIAL DELETED]

Mr. Folsom
complied, and a meeting was held in Mr. Wigg's office.

Mr. Folsom recalled Mr. Wigg advised him that the project involved a pipeline to go from Iraq through Jordan and that:

[GRAND JURY MATERIAL DELETED]

Mr. Folsom also recalled Mr. Wigg telling him that Israel's receipt of oil would be in return for its assurances that it would not disrupt the pipeline. In this first meeting, Mr. Wigg told Mr. Folsom that other individuals were arranging for the requisite Israeli guarantees or assurances. Finally, Mr. Folsom summarized what Mr. Wigg had told him about the role of Attorney General Meese in the Aqaba pipeline project. Mr. Meese was, according to Mr. Wigg's statements to Mr. Folsom:

[GRAND JURY MATERIAL DELETED]

After the meeting with Mr. Wigg, Mr. Folsom contacted another DOD lawyer, John H. McNeill. Mr. McNeill, a career civil servant, was an Assistant General Counsel with responsibilities in the international affairs and intelligence areas and expertise in the security assistance field -- i.e., the defense and military aspects of foreign assistance -- which Mr. Folsom thought might be useful in considering Mr. Wigg's problem.

Mr. McNeill recalled that Mr. Folsom contacted him, and made him aware of a sense of urgency and the need for discretion about Mr. McNeill's involvement in the project. Accordingly, Mr. Wigg, Mr. Folsom and Mr. McNeill agreed to hold their first meeting at Mr. McNeill's home on Sunday afternoon, November 24, 1985.

After this meeting, a specific proposal was developed to fund the salvage package with United States government funds. On December 10, 1985, at 4:00 p.m., the three men met again at Mr. Wigg's office in the Old Executive Office Building. Mr. Folsom recalled that Mr. McNeill and he

brought with them drafts of a specific proposal. At that meeting, Mr. Wigg, with the assistance of the DOD lawyers, drafted a proposed National Security Decision Directive intended to create a United States government funded salvage package.

A. December 10, 1985 -- Mr. Wigg Drafts Proposed National Security Decision Directive

On December 10, 1985, Mr. Wigg and the two DOD lawyers produced drafts of a proposed National Security Decision Directive (NSDD) from the President and two accompanying documents.^{292/} A verbatim recitation of the draft NSDD and accompanying documents follows:

PROVISIONS OF FMS LOAN TO THE GOVERNMENT OF ISRAEL

Using FMS authority and appropriations for FY-1987, a loan of \$350 million^{293/} shall be made by the United States Government to the Government of Israel, to be used for the purchase of defense articles and services for certain projects of Israel's choice, the existence of which may be classified. This loan shall be given priority over all other such loans to Israel, and the first \$350 million approved and appropriated by Congress for FMS loans to Israel shall be used for this loan. The terms and conditions governing the use of these funds shall be as provided by statute and the requirements of executive orders, regulations and administrative procedures may be applied as appropriate. The credit agreement between the U.S. Government and the Government of Israel shall

^{292/} Copies of these three documents were kept in Mr. Wigg's files at the NSC.

^{293/} Mr. Wigg made handwritten changes on the proposed NSDD. In the two places that the number "\$350" million appeared he crossed that number out and wrote in the number "\$375."

provide that disbursements under that agreement will be advanced directly to the Government of Israel upon its request. This loan shall only be made after the National Security Advisor has determined that several classified conditions precedent made known to him by me in a letter of instruction this day have been satisfied.

SECRET

Declassify on: OADR

The first accompanying document to the proposed NSDD was a proposed memorandum for the National Security Advisor from the President which was captioned "Secret" and "Eyes Only," and which the subject matter was described as being "Instructions Attendant to NSDD _____." The proposed memorandum stated:

EYES ONLY

In connection with NSDD _____ which I signed today, the following are your instructions in the matter of the special \$375 million FMS loan to Israel in FY-1987. The Prime Minister of Israel has provided us with a letter of assurance, reciting the promise of his government not to attack the Iraq-Aqaba Oil Pipeline except in self-defense. Before the loan is approved, you are directed to receive a letter from the Prime Minister of Israel addressed to you stating an unconditional commitment by his government to reimburse the specified insurer for benefits paid by him to the beneficiaries to cover interest payments due during the period of construction in the event Israel attacks the pipeline or its associated facilities. In addition, you are instructed to be satisfied that the Government of Israel or its authorized agent has established an escrow account for the sole purpose of making such payments in the event that Israel attacks the pipeline or its associated facilities. If no such attack occurs prior to the date on which the last interest payment prior to completion of the project is due (expected to be in 1989), it is my wish that my successor in this office ask Congress

to forgive the debt of \$375 million owed by Israel to the United States.

SECRET

Declassify on: OADR

The second accompanying document to the proposed NSDD was a memorandum from the President for officials in the different agencies that would necessarily be involved in this NSDD plan. The proposed memorandum read as follows:

SECRET

MEMORANDUM FOR THE DEPUTY SECRETARY OF STATE
THE DEPUTY SECRETARY OF DEFENSE
THE DIRECTOR, OFFICE OF MANAGEMENT
AND BUDGET
THE DIRECTOR, DEFENSE SECURITY
ASSISTANCE AGENCY

SUBJECT: Additional FMS Credits For Israel
In FY-1987 Budget Submission

In addition to the amount of FMS credits that may be requested for Israel in my FY-1987 budget submission, you are directed to include, as the highest priority, a further amount of \$375 million for the purchase of defense articles and services for certain classified projects. The terms and conditions governing the use of these funds, if authorized and appropriated by Congress, shall be provided by statute and as further provided in NSDD _____.

SECRET

Declassify on: OADR

The NSDD referred to the "classified conditions precedent" to the \$375 million FMS loan that were covered in the letter of instruction from the President to the National Security Advisor. The instruction letter revealed two

classified conditions precedent that must be satisfied prior to the making of the loan: (1) That the Prime Minister must send the National Security Advisor a letter stating "an unconditional commitment by his government to reimburse the specified insurer . . ." for money owed by Iraq to its construction lenders if Israel attacked the pipeline;^{294/} and (2) That Israel must establish an escrow account for the sole purpose of making payments to the insurer (i.e. OPIC/Citibank or some other political risk insurer) in the event that Israel attacked the pipeline.

The final provision of the proposed instructions to the National Security Advisor was the "forgiveness provision" that ten days later alarmed Judge Clark to such an extent that he alerted the incoming National Security Advisor, Admiral Poindexter, who, heeding Judge Clark's urgent warning and advice, terminated NSC involvement in the Agaba pipeline project. To repeat, that forgiveness provision said:

If no such attack [by Israel on the pipeline] occurs prior to the date on which the last interest payment [by the Government of Iraq on construction financing] prior to

^{294/} Mr. Wigg testified

[[GRAND JURY MATERIAL DELETED]]

completion of the project is due (expected to be in 1989), it is my wish that my successor in this office ask Congress to forgive the debt of \$375 million owed by Israel to the United States.

The drafting of the proposed NSDD with accompanying memoranda was completed on December 10, 1985. Later, Judge Clark and Admiral Poindexter would see or have described to them the proposed NSDD with instructions. However, Mr. Wigg apparently first showed the documents to both Mr. Wallach and CIA Director Casey.

Following his memorandum of October 30, 1985, first describing the new FMS plan to Mr. Rappaport, Mr. Wallach sent several additional telexes to Mr. Rappaport displaying the extent of his awareness of the evolution of the FMS salvage package concept.

On November 29, 1985, Mr. Wallach wrote a memorandum to Mr. Rappaport alluding to the FMS plan as follows:295/

D.W. [David Wigg] told me that the process was moving along and that there were unlimited funds to accomplish what we needed to do. Keep in mind that this is

295/ Mr. Wallach also referred to the November 20th letter from Prime Minister Peres to Mr. McFarlane which had been delivered to the White House on November 27, 1985. Mr. Wallach wrote that he had spoken with "Ehud G." (an apparent reference to Israeli official Ehud Gera) "about the letter." He wrote that "[w]e agreed upon changes as indicated in the copy I have to be sent to the embassy in Israel while I will see to it that it's delivered to Bud McFarlane." In response to requests for documents from the independent counsel, the White House has not located any additional letters from Prime Minister Peres or the Government of Israel relating to the Aqaba pipeline guarantee issue.

unprecedented in USG activity and requires approval by the NSC at the highest level. I saw him at my lunch and he advised me in a quick conversation that they were at the highest levels now and would try to have a response for me by December 1st.

On Monday, December 9, 1985, the day before Mr. Wigg finalized the FMS plan with the proposed NSDD and instructions, Mr. Wallach telexed Mr. Rappaport aboard his yacht in the Caribbean stating "I have requests pending to see B.M. [Bud McFarlane] and his successor. Unless I hear to contrary, I will also try to see B.C. [presumably Bill Casey]."

On Thursday, December 12, 1985, Mr. Wallach sent the following telex to Mr. Rappaport:

The capital DOD package appears to be in place. It will be submitted by D.W. [David Wigg] to B.M. [Bud McFarlane] today. It requires a letter from the senior most person in USG. Because of the unprecented nature, I will believe it when I see it. On Monday morning I will meet with your golfing partner [CIA Director Casey]. . . .

**B. December 16, 1985 -- Mr. Wallach and Mr. Wigg
Meet with CIA Director Casey**

On Monday, December 16, 1985, Mr. Wallach and Mr. Wigg went to Central Intelligence Headquarters in Langley,

Virginia, and met with Director Casey on the Aqaba pipeline project for approximately 25 minutes.^{296/} Mr. Wigg, who recalled that Mr. Wallach arranged the meeting, said it lasted from 20 to 30 minutes, after which Mr. Wallach asked Mr. Wigg to wait outside while Mr. Wallach had a private conversation

^{296/} According to Mr. Wallach's calendar, he was scheduled to meet with Mr. Meese at 11 a.m. on Monday, December 16, 1985. Mr. Meese's schedule, however, reflected that he was to fly to San Antonio, Texas, on Monday morning at 6:30 a.m. for a conference on drugs.

Mr. Meese's calendar contained the following scheduling notes with respect to meetings with Mr. Wallach in November 1985: Monday, November 11, 6:00 dinner with Mr. Wallach; Wednesday, November 13, 3:20 p.m. meeting with Mr. Wallach; Saturday, November 16, 8:00 a.m. brunch with Mr. Wallach; Monday, November 25, 12:15 p.m., Mr. Wallach's holiday lunch party.

Mr. Meese's and other calendar entries reflected the following scheduled contacts with Mr. Wallach in December 1985: Tuesday, December 3, 11:30 a.m. meeting with Mr. Wallach; Friday, December 13, lunch with Mr. Wallach; Tuesday, December 17, immediately upon his return from San Antonio Mr. Meese was scheduled to see Mr. Wallach at 5:30 p.m.; Wednesday, December 18, Mr. Meese's calendar reflects a Deputy Attorney General staff Christmas party and Mr. Wallach's calendar reflected "Ed's staff party"; Thursday, December 19, Mr. Wallach hosted a lunch at Mel Krupin's, a Washington, D.C. restaurant, for Mr. Meese's personal staff, and Mr. Meese dropped by for 15 minutes on his way to the White House; Friday, December 20, 7:00 a.m. breakfast with Mr. Wallach and a 12:30 p.m. lunch with Mr. Wallach and Mr. Kampelman on the same day.

Both Mr. Wallach and Mr. Meese traveled extensively and separately in November and December 1985. In November, between the two, they were out of town a minimum of 18 days. They saw each other at least on four of the remaining days of the month. In December, between the two, they were out of town a minimum of 16 days. They visited with each other on at least six of the remaining days.

with Mr. Casey. Mr. Wigg recalled that he

[GRAND JURY MATERIAL DELETED]

Mr. Wigg had only a general recollection of his meeting with Messrs. Casey and Wallach. He testified before the grand jury,

297/

[GRAND JURY MATERIAL DELETED]

After Mr. Wallach's private meeting with Mr. Casey, Mr. Wallach told Mr. Wigg that the two men discussed, among other things, the abilities of Charles P. Tyson.298/

297/ Mr. Wigg and Mr. Casey were previously acquainted; they had worked together in government and had been business partners. When Mr. Casey was Chairman of the Export Import Bank in 1974 and 1975, Mr. Wigg was a colleague, and became a family friend. In 1977, after both men left the EXIM bank, Mr. Wigg organized a business partnership in which Mr. Casey was a limited partner. The partnership was dissolved in 1981 or 1982. Mr. Casey became Director of the CIA at the outset of the Reagan Administration. In May of 1981, Mr. Wigg went to work for Mr. Casey at the CIA as a senior analyst.

298/ Mr. Tyson's name appeared in connection with the Aqaba pipeline project in Mr. Wallach's mid-November 1985 memoranda. Mr. Tyson, a native Californian, was working with businessman Adnan M. Khashoggi in the fall of 1985. He was apparently first contacted for an entree to the Government of Iraq. Mr. Wallach's memoranda indicated that there may have been some discussion of Mr. Tyson's assisting Messrs. Wallach and Rappaport to replace Bechtel as the contractor on the project.

Apparently, in response to Mr. Wallach's inquiries, Mr. Casey expressed a positive opinion of Mr. Tyson.

On December 16, 1985, after his meeting with Mr. Casey, Mr. Wallach sent Mr. Rappaport a telex which described the meeting with Mr. Casey:

A progress report of this day's activity: the meeting with your golfing partner lasted 45 minutes. Only D.W. and I were with him. I had met with D.W. for breakfast and reviewed the DOD documents. They are a model of simplicity. They provide for full funding within existing guidelines, but has never been conceived for this purpose. He approved the concept with expression as to it being unique in his experience. Please remember this document requires signature of highest authority after recommendation by B.M. [Bud McFarlane] or his successor. That aproval [sic] has not yet been obtained. But nothig [sic] negative can be read into that fact.

Transition events, holidays, and other priorities are factors. I have assurance from my friend [presumably Mr. Meese] that if necessary, he will engage new person on project. However both he and man with whom we met this a.m. both feel B.M. unlikely to have acted alone.

When Mr. Meese was shown this document, he stated that he had no recollection of any conversation with anyone about engaging the new National Security Advisor on the Agaba pipeline project. Mr. Meese did say that it was possible that Mr. Wallach may have asked him to "indicate to Mr. Poindexter, who may not have known, who Mr. Wallach was." Mr. Meese also said it was possible that he called Admiral Poindexter about Mr. Wallach and the pipeline project, but he did not recall making such a call.

In a deposition, Mr. Meese stated that he did not recall being aware of the plan to use FMS monies to fund the salvage package portion of the political risk insurance package. Mr. Meese conceded that it was possible that Mr. Wallach, at some point, may have mentioned his idea in a conversation. However, Mr. Meese did not recall such a conversation.

Mr. Meese also said that he did not recall any conversations with Mr. Wallach about his meetings with CIA Director Casey in October and December of 1985. He testified during the deposition that "I can't recall any conversations. It's possible he mentioned it at some time when we were together if he had had such a meeting, but I don't recall it."

C. December 21, 1985 -- Mr. Wigg Meets with Judge Clark at the Request of National Security Advisor Poindexter

Mr. Wigg testified

[GRAND JURY MATERIAL DELETED]

299/ Mr. Wigg did not know what response he may have received to any such memorandum. He

299/ Mr. Wigg indicated in his interviews with the office of independent counsel that he was certain he followed that procedure. However, the White House was unable to find any such Action Memorandum in the files of the NSC. This caused Mr. Wigg to question his memory of events, although he continued to express the belief that he had prepared an Action Memorandum.

attributed this uncertainty to the departure of Mr. McFarlane and the appointment of Admiral Poindexter at this time. Mr. Wigg did not believe the proposal was transmitted by Mr. McFarlane to Mr. Poindexter.

Mr. Wigg recalled that on Saturday, December 21, 1985, while he was Christmas shopping he received a call on his beeper. He contacted the White House and was informed that Admiral Poindexter was trying to reach him. Admiral Poindexter informed Mr. Wigg by telephone of a conversation with Judge Clark during which Judge Clark asked about the status of the Aqaba pipeline project.

When Admiral Poindexter asked Mr. Wigg for a status report on the project, Mr. Wigg, in as oblique terms as possible over an open telephone line, explained the proposed NSDD and the FMS loan plan to Admiral Poindexter. Admiral Poindexter instructed Mr. Wigg to meet with Judge Clark and brief him on the Aqaba pipeline project.

Mr. Wigg immediately contacted Judge Clark by telephone. After first collecting some documents from the White House, he proceeded immediately to Judge Clark's nearby Washington, D.C. residence.

Both Mr. Wigg and Judge Clark recalled that Mr. Wigg briefed Judge Clark on the FMS Loan plan for funding the political risk salvage package with military assistance funds. Judge Clark testified in the grand jury that

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[GRAND JURY MATERIAL DELETED]

[GRAND JURY MATERIAL DELETED]

[GRAND JURY MATERIAL DELETED]

Mr. Wigg's recollection of his conversation with Judge Clark is consistent with Judge Clark's recollection. Mr. Wigg recalled that, when he described the project to Judge Clark, Judge Clark stated that the concept of giving money to Israel was a nonsensical idea, that it was a "protection racket."

Mr. Wigg recalled that Judge Clark also expressed a concern about Mr. Wallach's involvement in the project. Mr. Wigg testified that

[GRAND JURY MATERIAL DELETED]

. . .

Mr. Wigg left the meeting with Judge Clark thinking that

[GRAND JURY MATERIAL DELETED]

Judge Clark recalled that he later spoke with Admiral Poindexter about the Aqaba pipeline project, and conveyed his views directly to him. Judge Clark recalled that Admiral Poindexter told him the NSC was closing the file on the matter.

Shortly thereafter, Mr. Wigg met with Admiral Poindexter, who, according to Mr. Wigg's testimony,

[GRAND JURY MATERIAL DELETED]

**VIII. EARLY JANUARY 1986 -- ADMIRAL POINDEXTER
ORDERS MR. WIGG TO DISCONTINUE WORK ON
THE AQABA PIPELINE PROJECT**

Despite Judge Clark's unequivocal advice and Admiral Poindexter's instructions to cease providing any assistance to Messrs. Wallach and Rappaport in the Aqaba pipeline project, Mr. Wigg continued his effort to convince Admiral Poindexter that the project to which he had devoted much energy and time had merit.

In a December 31, 1985 draft of a memorandum to Admiral Poindexter, Mr. Wigg suggested certain organizational changes that have created a new directorate within the NSC staff headed by Mr. Wigg. This new directorate would give Mr. Wigg broader authority and jurisdiction than he had in his current position. In an effort to persuade Admiral Poindexter of the wisdom of his proposal, Mr. Wigg described "some [of his] actual accomplishments over the past year." He gave the Aqaba pipeline project as an example "of how economics can be used proactively to solve U.S. problems, improve relationships with other countries, increase leverage, protect our national interests, etc.," Mr. Wigg wrote:

Iraq-Aqaba Pipeline Insurance. When Bud asked me to take on this deal it was a shambles. Roger had succeeded in getting OPIC involved, but they were dead-set against going ahead and leaks were becoming a distinct possibility. It only took one meeting with OPIC to convince me that their involvement was not a viable option. I took the concept I explained to you on the phone a couple of Saturdays ago^{300/} to DOD and we now have a package that I believe will fly with the President's imprimatur[sic]. Of course Bill Clark may obviate our need for the insurance,^{301/} but at least the deal that had

^{300/} This memorandum was drafted on December 31, 1985, but not finalized until January 6, 1986. "A couple of Saturdays ago" referred to the Saturday, December 21st phone call between Admiral Poindexter and Mr. Wigg described above.

^{301/} Judge Clark visited Baghdad, Iraq, on January 24-26, 1986, and met with a wide range of ministers on behalf of two of his clients. The Aqaba pipeline project stalemate was discussed in these meetings. However, Judge Clark stated that
(Footnote Continued)

been given up as hopeless was salvaged in a secure manner. If it serves to set in motion the rest of the process, it will be an important contribution to our regional goals.

Mr. Wigg testified that

[GRAND JURY MATERIAL DELETED]

Admiral Poindexter did not institute Mr. Wigg's proposed organizational changes. Mr. Wigg recalled having a conversation, probably after writing this memorandum, with Admiral Poindexter when Admiral Poindexter came into Mr. Wigg's office and said:

[GRAND JURY MATERIAL DELETED]

After receiving those emphatic instructions, Mr. Wigg recalled

[GRAND JURY MATERIAL DELETED]

(Footnote Continued)

he was not acting as a representative of any interested party or the NSC in the pipeline matter.

302/ Mr. Wigg testified that

[GRAND JURY MATERIAL DELETED]

303/

The documentary [GRAND JURY MATERIAL DELETED]

that active involvement by the NSC in the proposed Aqaba pipeline project ceased after Admiral Poindexter's instructions to Mr. Wigg. The evidence also suggests that neither the Department of State nor the CIA were officially

302/ On Monday, February 3, 1986, Mr. Wallach in Geneva telexed Mr. Rappaport in Costa Rica that he had met with an unnamed NSC staffmember and with Mr. Wigg on the pipeline project and that, "I also met with my freind [sic] [Mr. Meese], who will personally contact J.P. [John Poindexter] to arrange meeting for me, if it is necessary to obtain signature of his superior." Mr. Wallach's calendar reflects a meeting with Mr. and Mrs. Meese on Saturday afternoon, February 1, 1986, before Mr. Wallach departed that evening for Geneva, Switzerland. Messrs. Wallach and Meese had been in regular contact: Mr. Wallach attended a Department of Justice conference with Mr. Meese in Williamsburg, Virginia on January 24 and 25, at Mr. Meese's personal invitation during which the two men dined together, as reflected on Mr. Wallach's calendar and credit card charge records. Mr. Wallach lunched with Messrs. Meese and Chinn and Dr. London on Wednesday, January 29, 1986, at the Department of Justice. Messrs. Meese and Wallach also had breakfast together on Thursday, January 30, 1986.

303/ In the Spring of 1986, Mr. Wallach recommended Mr. Wigg for a job at the Wedtech Corporation. Mr. Wigg went to New York and met with the Wedtech officers, but no agreement was reached between the parties and Mr. Wigg did not go to work for Wedtech. Mr. Wigg thereafter went to work at the Department of Defense, where he is now a Deputy Assistant Secretary of Defense for Policy Analysis under Assistant Secretary of Defense for International Security Affairs Richard L. Armitage.

informed of the 1985 NSC role in the pipeline project.^{304/}

[GRAND JURY MATERIAL DELETED]

The only apparent major "sensitivity" surrounding the project was the issue of the need for an Israeli security guarantee and the circumstances surrounding the willingness of the Prime Minister of Israel to give such a guarantee.

Upon the NSC's withdrawal from efforts to assist Messrs. Wallach and Rappaport to assemble an acceptable salvage package to backstop an OPIC or privately funded insurance package for the pipeline, any hope of obtaining United States government funds for the salvage package evaporated and the entire OPIC insurance proposal died.

**A. Late January 1986 -- Mr. Rappaport
Discontinues His Relationship
With Mr. Wallach**

Mr. Wallach's association with Mr. Rappaport ended in 1986. It appears that the relationship ceased with the demise of the NSC interest in the pipeline project in January 1986. Previously, on November 27, 1985, in the midst of the

^{304/} The CIA did receive intelligence reports during 1985 of the Government of Israel's quid pro quo for giving its security guarantee. In addition, Messrs. Rappaport and Wallach spoke to the Director about the project and their involvement in it.

NSC active involvement in the pipeline project and on the day that the letter of assurance from Prime Minister Peres was apparently delivered to the White House, Mr. Wallach wrote a letter to Mr. Rappaport in which it appeared that he wished to dispense with a fixed retainer fee arrangement, and instead, receive a share in the profits from the successful completion of the pipeline project and other future projects.

Mr. Wallach stated in his November 27 letter:

[i]n order to meet my current responsibilities, and to augment them with the additional expenses required by my Washington presence (for [me] to appear as a successful and independent lawyer is a real factor in maintaining my availability) I require an income of \$1 million a year. That allows me to meet my current obligations, but does not constitute accretion of assets. Since I must plan upon, at the least, a diminution of my Washington presence in 1988, even if left with private projects which we can accomplish without a Washington component, my real future lies in the percentage of success our efforts achieve. That gamble I am prepared to take.

In December 1985, two expense reimbursements to Mr. Wallach were owed by Mr. Rappaport totalling \$32,884.^{305/}

There is no evidence of any further fee payments to Mr. Wallach by Mr. Rappaport, although there were additional communications between the two men. In a January 28, 1986

^{305/} As indicated above, the reimbursements were carried on Mr. Wallach's accounting records as expenses in a California personal injury case in which Mr. Rappaport had no involvement.

telex to Mr. Rappaport, Mr. Wallach wrote, "I believe I detect some coolness in our relationship which I regret very much. The money is important to me, and essential, but so is the relationship in all of the facets in which it appeared to be developing. Let us see what we can do to restore that level."

In early February 1986, Mr. Wallach wrote a memorandum to Mr. Rappaport in which he stated, "I assume we have nothing further of a professional nature pending between us unless I hear from you to the contrary."

B. May 9-18, 1986 -- Mr. Meese Travels To Israel with Mr. Wallach

As indicated above, in the fall of 1985, Mr. Wallach assisted in arrangements for Mr. Meese to travel to Israel in the Spring of 1986. In the February 1986 memorandum referred to above, Mr. Wallach informed Mr. Rappaport that he and Mr. Meese were:

still planning the trip to Israel, commencing May 9th but, for obvious reasons, it may be cancelled. There will be a meeting with the P.M. At that time, if you have alerted him, I can undertake an explanation of events which will clearly reflect your best efforts, and establish responsibility for lack of progress with those other parties who deserve it.

On May 9, 1986, Mr. Meese traveled with Mr. Wallach and Mr. Wallach's mother to Israel for a nine-day visit.^{306/} Mr. Breger arranged for the trip through an American organization, the American Friends of Tel Aviv University. A Department of Justice staff member and two special agents of the FBI also accompanied Mr. Meese.

The independent counsel has been unable to determine if Mr. Wallach had any discussions about the Aqaba pipeline matter with Prime Minister Peres or any other Israeli official during this trip.^{307/} Mr. Meese, in response to questions by the independent counsel during an oral sworn deposition, testified that the subject "could have come up," but that he did not recall any conversations with the Prime Minister or any other official about the Aqaba pipeline project.

^{306/} Mr. Wallach and his mother, with others, had donated a grove of trees in Israel in honor of the memory of Mr. Meese's son, Scott R. Meese, who had been killed in an auto accident in Virginia in July of 1982. While in Israel, the party attended a ceremony dedicating the grove of trees.

^{307/} The official schedule reflected that Mr. Meese and his party (which included Mr. Wallach) dined with Prime Minister Peres between 1:15 p.m. and 3:00 p.m. on Monday, May 12, 1986. The schedule also reflected a dinner hosted by the United States Ambassador on Thursday, May 15, wherein one of the invited guests was Minister of Economy and Planning, Gad Yaacobi.